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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/713 /2008 – SM[BR] Date 15/02/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SECURE METERS LTD.
P.O.BOX NO.30,PRATAP NAGAR INDUSTRIAL AREA,
UDAIPUR-313003 (RAJ.)

M/S SECURE METERS LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 227 / 2010 –SM[BR] dated 20.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   SHRI V. LAKSHMIKUMARAN ADV.
   B-6.10, SAFDARJUNG ENCLAVE NEW DELHI-29.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:20.01.2010

Excise Appeal No.E/713/08-SM

[Arising out of Order-in-Appeal No.598 (RKS) CE/JPR-II/2007 dated 20.12.2007 passed by the Commissioner (Appeals-II), Jaipur].

For approval and signature:

Hon'ble Mr.Rakesh Kumar, Member (Technical)

M/s. Secure Meters Ltd. ...Appellant

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant :Shri.Ravi Raghavan, Advocate
Present for the Respondent:Shri.R.K. Sani, DR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 227/2010, SM(BR) **DATED:20.01.2010**

PER: RAKESH KUMAR

The appellants are providing the taxable services and some other taxable services for which they are registered with the Jurisdictional Central Excise Authority. During the period from December, 2003 to December, 2004 the appellant received certain taxable services of erection, installation & commissioning and technical testing from two service providers M/s. Mother Power House Pvt. Ltd. and Vision Tech. However at the time of receiving services from M/s. Mother Power House Pvt. Ltd. and Vision Tech., these two service providers, though providing taxable services, were not registered with the Central Excise Department as service tax assessee and were not paying any tax. However, subsequently, they took service tax registration and paid the service tax under supplementary invoices dated 14.9.04, 23.12.03 and 23.12.04. Total service tax paid under the supplementary invoices was Rs.44,028/- and on these supplementary invoices the appellant took service tax credit. The Department is of the view that since at the time of providing taxable service, M/s. Mother Power House Pvt. Ltd. and Vision Tech. did not have any service tax registration, the cenvat credit on the basis of their supplementary invoices issued subsequently, cannot be allowed to the appellant. On this basis, a show cause notice dated 17.1.06 was issued to the appellant for denying the service tax. The Asstt. Commissioner vide Order in Original No.38/07-CE dated 25.4.07 confirmed the cenvat credit demand of RS.44,028/- and besides this, imposed penalty of Rs.20,000/-. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide the impugned order in appeal dated 20.12.2007 uphold the Asstt. Commissioner's Order and rejected the appeal. It is against this order the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Ravi Raghavan, Advocate, ld. Counsel for the appellant, pleaded that there is no dispute about the fact that the taxable services in respect of which service tax credit has been taken, had been received by the appellant and had been used for payment of service tax on the output services, that while it is true that at the time of receiving the service, the service providers were not registered, they subsequently took registration and paid the service tax under supplementary invoices and that in view of this, it is totally wrong for the department to deny the cenvat credit on the basis of such supplementary invoices. He pleaded that the Commissioner (Appeals)'s finding that registration is a fundamental requirement and if at the time of providing services, the service provider did not have registration, even if, he subsequently obtained service tax registration and pays the service tax under supplementary invoices, no service tax credit can be allowed on the basis of supplementary invoices, was totally wrong and not supported by any provision of law. He, therefore, pleaded that the impugned order is not correct.

2.2 Shri R.K. Saini, Ld. DR defended the impugned order reiterating the findings of the Commissioner (Appeals).

3. I have carefully considered the submissions from both the sides and perused the records. In this case, there is no dispute about the fact that the appellant had received certain taxable services from M/s. Mother Power House Pvt. Ltd. and Vision Tech. during the period from December 2003 to December 2004, while at that time, the service providers i.e. M/s. Mother Power House Pvt. Ltd. and Vision Tech. were not registered and the invoices issued by them did not mention any service tax registration no. That they subsequently took the

service tax Registration and paid service tax under supplementary invoice dated 14.9.04, 23.12.03 and 23.12.04 is also not under dispute. There is also no dispute that input services have been used by the appellant for providing output services which are taxable. In view of this, it is not correct to deny the service tax credit on the basis of the above mentioned supplementary invoices, just because at the time of receipt of the input services, the input service providers were not registered and had not mentioned service tax registration no. in the invoices. When the receipt of input services is not disputed and the fact that the input service had been used for providing the taxable output services is not disputed, the credit of service tax on the input services even if paid subsequently under supplementary invoices, cannot be denied. The impugned order, therefore, is not sustainable and the same is set aside. The appeal is allowed with consequential relief.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita