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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. ST/154 /2008 - CU[DB] Date **04/05/2011**

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S DEVIKA SECURITY SERVICES Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/170/ 2011 CU[DB]** dated 29.04.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar

(Customs Appeal Branch)

Copy to :

1. Respondent
M/S DEVIKA SECURITY SERVICES
293-A, SHIVKATRA, G.T.ROAD,
KANPUR.

2. Adv. / Consult MR. SHASHANK SHEKHAR, ADV
C/O REPONDENT

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 154 of 2008

[Arising out of Order-in-Appeal No. 351/ST/APP/07 dated 16.11.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise & Service Tax, Kanpur	Appellants
Vs.	
M/s. Devika Security Services	Respondent

Appearance:
Shri B.L. Soni, SDR for the Appellants
Shri Shashank, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 19.04.2011

Final **ORAL ORDER NO. ST/170/11**

Per Archna Wadhwa (for the Bench):

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri B.L. Soni for the department and Shri Shashank, learned Advocate for the respondent.

2. The dispute in the present appeal relates to as to whether the activity of keeping the vehicles on behalf of some banks and finance agencies would amount to activity of storage and warehousing services so as to be liable to payment of service tax. The respondents are engaged in keeping the vehicles of some banks who have given loans to the vehicle owners for purchase of vehicles but the vehicle owner have failed to repay the loan amount and as such the vehicles have been taken in the custody by the financial institutions. As such Banks, finance agents do not have sufficient facility to keep the vehicles they availed the services of the respondents for keeping the vehicles and also providing security, maintenance etc. to the said vehicles. Revenue entertained the view that such activity of the respondents amounted to storage and warehousing activity and accordingly, sought to tax the same. Show cause notice dated 16.3.07 was issued proposing confirmation of service tax of Rs.8,05,813/- and education cess of Rs.11,580/- for the services provided by them during the period 2002-2006. The said show cause notice culminated into an order passed by

the original adjudicating authority confirming the demand and imposing penalty.

3. However, on appeal the said order of the adjudicating authority was set aside by the Commissioner (Appeals) holding that the activities undertaken by the respondents amounted to rendering of open space for parking for cars by the Banks etc. and did not amount to storage and warehousing activity. He accordingly, set aside the impugned order. Hence the present appeal.

4. Though both the sides have advanced arguments on the merits of the case, we find that undisputedly the respondents got themselves registered with the Service tax department with effect from 1.6.2006 under the category of 'business auxiliary services' and have been paying service tax accordingly with effect from the said date. The dispute in respect of the same services pertains to the period prior to 1.6.06. It is seen that the Revenue has not raised any objection in the appellants registration under the category of business auxiliary services and accepted the service tax paid by them with effect from 1.6.2006. Tribunal in the case of BCCI vs. CST Mumbai reported in 2002 (7) STR 384 (Tri- Mumbai) has held that when there is an imposition of tax on a particular activity from a specific date, the same activity cannot be held to be falling under a different entry prior to the said date. As such, we are of the view that the Revenue's appeal can be disposed of on this short ground itself. The Revenue having taxed the respondents in the category of business support services with effect from 1.6.06, their

stand prior to the said date for same activity amount to storage and warehousing cannot be accepted. Revenue's appeal is accordingly, rejected.

(Archana Wadhwa)
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

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