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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/61 /2011 - CU[DB] Date **16/12/2011**
ST/S/125/11

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

To :
M/S INDUSTRIAL SECURITY ASSOCIATES,
18/103, GHATIA AZAM KHAN, AGRA.

M/S INDUSTRIAL SECURITY ASSOCIATES, Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/640/ 2011 CU[DB]** dated 13.12.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/829/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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 & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 16.11.2011

Service Tax Stay No. 125 of 2011 and Service Tax Appeal No. 61 of 2011

[Arising out of Order-in-Appeal No. 515/ST/APPL/KNP/2010 dated 8.10.2010 passed by the Commissioner of Central Excise, Kanpur]

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Industrial Security Associates Appellant

Vs.

CCE, Kanpur Respondent

Appearance:

Appeared for Appellant : Ms. Neha Gulati, Advocate
Appeared for Respondent : Shri K.K. Jaiswal, SDR

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/640/11 dated 13.12.11
Stay order No. ST/829/11

Per **Mathew John:**

The Appellants were providing security services to their customers. Initially they did not include the value of salary paid to the persons employed by them for providing security for arriving at the value on which service tax was to be paid. Revenue issued two Show Cause Notices proposing that service tax has to be paid on the entire value received from the customers including salary of personnel employed, for the periods April 2004 to September 2004 and October 2004 to March 2005. On adjudication, service tax amounts of Rs.2,37,262/- and Rs.2,25,829/- were confirmed along with interest for the two periods. Further, penalties ~~under Sections 76 and 78 of Finance Act, 1994~~ of Rs.2,37,262/- plus Rs.2,25,829/- were imposed under Section 76. Penalties equal to the same amounts were separately imposed under Section 78 also. Aggrieved by the order, the Appellants filed appeal with the Commissioner (Appeals) who upheld the adjudication order. Aggrieved by the order of the Commissioner (Appeals), the Appellants have filed this Appeal. The Appellants have already paid the duty demanded along with interest and they are not contesting such payment made. They are only contesting ~~penalty~~ penalties imposed on them. They submit that they were under the bona fide impression that they need to pay service tax only on the commission amount retained by the appellants and not on the value including the salary of personnel employed for providing services. The appellants submits that their firm is a small proprietorship firm and penalties under Section 76 and 78 cause great hardship to the appellants who had earned little money by way of commission in providing the security services.

2. The Authorised Representative submits that as per Section 67 of Finance Act, 1994 tax is to be paid on the gross value of services. Without the employees the impugned service could not have been rendered. ~~remanded~~. They did not disclose the full value received by them in their returns and so penalties are justified.

3. We have considered the plea of the appellants and also the submissions of the Authorised Representative of the Revenue. We are of the view that the Appellants' impression that they had to pay service tax on their commission only cannot be considered to be malafide. Considering that the appellants are a small firm, and the levy was in the early stage and their realisation from the activity was only that of Commission. So this is a fit case to invoke provisions of Section 80 of Finance Act, 1994 and waive penalty imposed on the Appellants. So, we waive the penalties in the Appellants. Thus the Appeal is allowed.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM