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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/191 /2008,396 /2008 - CU[DB]   Date **30/08/2011**

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10,
INDORE 452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S INDUSTRIAL SECURITY ORGANISATION Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/410-11 2011 CU[DB]** dated 23.08.11

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 INDUSTRIAL SECURITY ORGANISATION
34, CP COLONY
MORAR,GWALIOR (M.P.)

2. Adv. / Consult

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,
West Block No.2, R.K.Puram, New Delli,

Court No.III

Date of hearing : 11. 08. 2011
Date of Pronouncement :

S.T. Appeal Nos.191/2008 & 396/2008

(Arising out of O/A Nos. IND-I/192 & 193/2007 dated 20.11.2007 & dated 20.9.2007 both passed by Commr. of Customs & Central Excise (Appeal I), Indore)

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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 His Lordship wishes 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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Commr. of Customs & Central Excise, Indore

...APPELLANT(S)

VERSUS

M/s Industrial Security Organization

RESPONDENT (S)

APPEARANCE

Rep. by Shri Amrish Jain, SDR for the Department
Rep. by none for the Respondent (s)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Oral Order No. ST/410 – 411/11

Per Smt. Archana Wadhwa :

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. We have heard the ld. SDR, Shri Amrish Jain. Nobody appeared for the respondents.

2. The facts are simple and the issue involved lies in a narrow campus. The respondent is registered with the Service Tax Department for providing services of security personnel. It was alleged by the Revenue that during certain period, he neither filed ST-3 Return nor paid service tax on the amount received from various customers. The information gathered from various organization to whom the respondent was providing services under security agency services, were collected and it was found that the service tax to the extent of Rs.1,73,083/- stands short paid by the respondent.

3. On the above basis, two show-cause notices dated 1.3.05 & 17.4.06 were issued demanding duties of Rs.1,73,083/- and Rs.54,948/-. Notice was also proposed imposition of penalty upon the respondent.

4. The said show-cause notice culminated into an order dated 28.9.06 passed by the original adjudicating authority confirming demand along with confirmation of interest and imposing penalty. Being aggrieved with the said order, the respondent filed an appeal before the Commissioner (Appeals) on various grounds.

5. The appellate authority vide his impugned order, rejected the respondent's plea that they are not commercial concern and being an individual, services provided by them cannot be held liable to tax. However, he accepted the respondent's stand that a part of the services so provided by them fell under supply of manpower supply, which became liable to tax w.e.f. 16.6.05. Accordingly, the quantum of service tax confirmed against the respondent was reduced along with reduction of penalty. In respect of services provided to M/s Cancer Hospital & Research Institute, Gwalior and M/s M.P.F.C., Gwalior, he remanded the matter to the lower authority for re-quantification of demands.

6. The grievance of the Revenue is that the Commissioner (Appeals) has himself examined the bills produced by the assessee. He has also observed that the bills for the entire year have not been submitted by the respondents and based on the value of bills as supplied by M/s Cancer Hospital & Research Institute, Gwalior and M/s M.P.F.C., Gwalior and ~~patron~~ pattern of charges in respect of security personnel and others, he has held that approximate 30% of bill value represents the charges on the security personnel and he has accordingly confirmed the demand.

7. We find that there is no dispute about the legal position as arrived by the Commissioner (Appeals). The dispute relates to actual re-quantification of the tax confirmation against the respondent. We also take into consideration the observations made by the Commissioner (Appeals) that the bills for the entire period do not

stand produced by the respondent and he has held 30% of the services as security services on approximation basis. We agree with the ld. SDR for the Department that such approximation adopted by the Commissioner (Appeals) may not be justifiable. As such, we set aside the impugned order and remand the matters to the original adjudicating authority for re-quantification of the demand against the respondent, based upon the documentary evidences produced by them. Needless to say that the assessee would be given an opportunity to produce the relevant bills/invoices etc. along with other evidences in support of their submissions that a part of the services actually related to manpower supply. On verification and examination of the said invoices, the original adjudicating authority would re-quantify the demand and consequent penalty, if any.

8. Revenue's appeals are thus allowed by way of remand.

(Pronounced in the open Court on ....23/8/11..........)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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