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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/369 /2007 - CU[DB] Date **24/03/2011**

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

To :
M/S INVINCIBLE SECURITY

C/O. AARYAN BUSINESS CENTRE,3RD FLR,
SHARMA MARKET, HOSHIARPUR,SECTOR-51,
,NOIDA-201301

M/S INVINCIBLE SECURITY Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 105 2011 CU[DB]** dated 17.03.11

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
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult : MM SHARMA, ADV
CHAMBER NO 77,
PATILA HOUSE COURT
NEW DELHI

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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH , NEW DELHI

Court No. IV

ST/Appeal No.369/2007

(Arising out of order in appeal No.43/CE/Appl/Noida/06 dated 25.4.07 passed by the Commissioner of Customs & Central Excise (Appeals), Noida)

Date of Hearing: 22.2.2011

For Approval and signature:

Hon'ble Mr Ashok Jindal, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

M/s Invincible Security — Appellants

Vs

CCE, Noida — Respondent

Appeared for the Appellant: Shri D. Sharma, Advocate
Appeared for the Respondent: Shri K.K. Jaiswal, SDR

Coram: **Hon'ble Mr Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/105/11

Per Mathew John:

M/s Invincible Security, C/315, Sector 10, Noida is engaged in the business of providing security services. The services provided by them is one of the services covered under Service tax. They are duly registered with jurisdictional Service Tax office having registration No. AE/ZPR/6237/F/ST/001 dated 1.3.04.

2. The appellants were engaged by M/s Bharat Sanchar Nigam Ltd, Moradabad for providing security services vide an agreement. The terms and conditions were mutually agreed upon. The BSNL was reluctant to pay the serviced tax on the invoices raised by appellants and instead BSNL started deducting the amount of service tax from the invoices raised by the Appellants. The BSNL kept depositing the said amount of service tax in Punjab National Bank, Moradabad nominated for payment of service tax.

3. The BSNL issued various certificates to the appellants evidencing the fact that the service tax on the amount charged by the Appellant has been deducted and deposited with the nominated bank for and on behalf the Appellant. Sample of such certificates were submitted. Copies of TR-6 challans evidencing deposit of service tax by BSNL was also provided to Appellant.

4. Vide letter No. 20/Misc/STAX/R-1/N-1/04/117 dated 30.5.05, the Superintendent, Central Excise Division I, Range 4, Noida demanded the interest and penalty on late depositing of service tax. In this letter, they admitted that service tax was paid. The interest has also been deposited vide challan No. 007/05-06 of Rs. 23,219/-.

5. A Show Cause Notice was issued to the Appellant on the ground that as per section 68 of Finance Act 2004 they were required to pay service tax on service rendered to BSNL which has not been remitted by them to treasury and they did not follow the relevant rules.

6. The SCN was adjudicated vide Order-in-Original No.9 Joint Commissioner/ Noida/06 dt 31-08-06. The operative part of the said order is re-produced below:-

> *" The demand of service tax amount of Rs. 7,02,235/- for the period July 2003 to March, 2004 from M/s Invincible Security is hereby confirmed under Section 68 of the Finance Act, 1994 as amended;*
>
> *(ii) I also demand interest from M/s Invincible Security at appropriate rate on the service tax amount of Rs. 7,02,235/- under Section 75 of the Finance Act, 1994 as amended;*
>
> *(iii) I also impose penalty @ Rs.200/- per day on M/s Invincible Security under Section 76 of Finance Act, 1994 as amended. The penalty is leviable for each day till the principal amount of service tax is deposited.*

The dues adjudged shall be deposited forthwith."

7. The party filed Appeal with the Commissioner of Central Excise (Appeals), who upheld the above O-in-O vide his Order-in-Appeal dated 25-04-07. Now the Appellant is in second Appeal against the order of the Commissioner (Appeal).

8. The main argument of the Appellant is that all tax dues and interest thereon have been deposited into the treasury by the BSNL and hence there is no further payment due to the Government. So they pray that all the demands may be set aside.

9. When the matter came up for hearing on 16-12-2008, the Tribunal gave the following directions,--

"Prima facie, merely because the amount has been paid in a different bank and in a different account number, fastening tax liability once again is not justified. The factual position is not clear. The Commissioner is directed to conduct necessary verification and submit a report, inter alia, indicated

> *(a) Whether the service tax paid by BSNL, Moradabad has reached the Government Accounts, (b) Whether this error can be rectified by transfer entries in the concerned Accounts and (iv) any other relevant points."*

10. Now when the case has come up for hearing the Ld. DR produced a certificate issued by Superintendent of Central Excise, Moradabad certifying that M/s BSNL has deposited Rs.10,33,673/- in the matter. There is no mention of interest. There is no specific clarifications as desired by the Tribunal.

11. We are not inclined to keep the matter pending further. We propose to go by the submission of the Appellant that in this case the service tax liability and interest have has been discharged, though not by the service provider but by the person who received the service. So there are technical violations of the relevant laws. However considering that these difficulties were caused due to the improper stand of a Government Company we are inclined to take a lenient view in the matter. Since all duties have been remitted into the treasury as per submission of the Appellant we waive the related demands made in the impugned order. Further invoking the provisions of section 80 of the Finance Act, 1994 we drop all penalties imposed in the impugned order.

11. However we make it clear that this order cannot be precedent for the Appellant not to comply with the relevant Rules for future period. It is also made clear that if the interest as applicable is not paid the department can recover it from the Appellant after giving him notice and opportunity to provide evidence, if any.

12. The Appeal is disposed of in terms of orders as above.

(Ashok Jindal)
Member-Judicial

(Mathew John)
Member-Technical