

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS Appeal Branch

Appeal No. : ST/576/2012 - CU[DB]
ST/S/1416/12

Dated: 16/05/12

Assistant Registrar
C.E.S.T.A.T. New Delhi
To, **Iffco Tokio General Insurance Ltd**
34, nehru Place, Ndelhi-19
Iffco Tokio General Insurance Ltd

(Appellant)

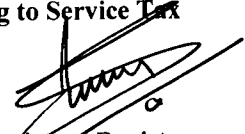
VS

C.S.T.-Service Tax - Delhi

(Respondent)

I am directed to transmit herewith a certified copy of **Final Order No. ST/A/380/2012 CU[DB]** dated 10.05.2012 passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

(Alongwith Stay Order No ST/S/535/12)


Assistant Registrar
CUSTOMS Appeal Branch

Copy To,

1. Respondent

C.S.T.-Service Tax - Delhi
MG MARG... IP ESTATE... 17-B... IAEA HOUSE...
I P ESTATE, DELHI, 110002

2. Advocate(s) / Consultant(s):

P.K.SAHU
D-247, Second Floor, Defence colony, N
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 Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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

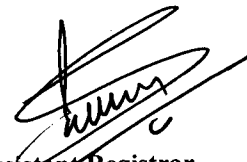
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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. Gaurd 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 : 10.5.2012

**Service Tax Stay No. 1416 of 2012 and Service Tax Appeal
No. 576 of 2012**

[Arising out of the Order-in-Appeal No. 22/S.Tax/D-II/2011 dated 30.1.2012 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

For Approval & Signature :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Mathew John, Technical Member

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 Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

IFFCO-Tokio General Insurance Ltd.

Appellants

Vs.

CST, New Delhi

Respondent

Appearance:

Appeared for Appellant : Shri Prashant Shukla, Advocate
Appeared for Respondent : Shri K.P. Singh, A.R.

CORAM: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Mathew John, Technical Member

Final Order No. ST/A/380/12 dated.....
stay order no. ST/S/535/12

Per Mathew John :

The Appellant had provided service classifiable as insurance auxiliary service under Section 65(55) of Finance Act, 1994. During the period 2001 the appellant paid service tax at

the time of providing the service, that is when they issued the invoices. But actually the money was received by them during the period April 2002 to June 2002. When the money was received they did not pay service tax because it was already paid during the previous period. Revenue has issued a Show Cause Notice demanding that service tax should have been paid during the time when the money was actually received. Revenue was also of the view that they should have asked for refund of the service tax paid at the time of issuing invoices. *The* Show Cause Notice has been confirmed demanding service tax of Rs.1,91,325/- along with interest and penalties. In appeal filed against the said order, the Commissioner (Appeals) did not give any relief.

2. The Counsel for the appellant submits that Rule 6 of the Service Tax Rules read as under :-

"6 Payment of service tax. – (1) The assessee shall deposit with the bank designated by the Central Board of Excise and Customs for this purpose in Form TR-6 by the 15th of the month immediately following the calendar month, the service tax collected by him on the value of taxable service :

Provided that where an assessee is, for any reason, unable to correctly estimate on the date of deposit the actual amounts collected for any particular month or period, the assessee may make a request in writing to the Central Excise Officer to make a provisional assessment of the tax on the basis of the amount deposited and the Central Excise Officer, may, on receipt of such request, order provisional assessment of tax and where the Central Excise Officer makes a provisional assessment, the provisions of Central Excise Rules, 1944

relating to provisional assessment, except so far as it relates to execution of bond, shall, so far as may be, apply of such assessment."

3. This rule gives enough room for paying the tax in advance and it cannot be said that they should not have paid tax at that time and tax should have been paid later.

4. The ld. A.R. for Revenue submits that tax should have been paid only at the time of receipt of money. Appellants should have filed refund application for claiming refund of tax paid earlier.

5. Considering that the amount involved is small and it is a case of payment of tax in advance and not a case of refund of tax paid, we do not find any reason to sustain the impugned order. Accordingly, the orders of the lower authorities is set aside after giving waiver of pre-deposit of dues. Thus stay petition as well as appeal are disposed of.

(Dictated & pronounced in open Court)

(D.N. Panda)
Judicial Member

~~(Mathew John)~~
Technical Member

RM