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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/776/2008-CU[DB],

Dated: **21/09/2012**

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

PNC CONSTRUCTION CO. LTD.,
D-51, KAMLA NAGAR,AGRA.

PNC CONSTRUCTION CO. LTD., (Appellant)

VS

C.C.E. CHANDIGARH (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/599/2012-CU[DB]** dated **11/06/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
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C.R. Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

2. Advocate(s) / Consultant(s):
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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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

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Assistant Registrar
CUSTOMS Appeal Branch

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

Service Tax Appeal No.776 of 2008

[Arising out of Order-In-Appeal No.470/CE/CHD/2008, dated 01.09.08 issued by CCE, Chandigarh]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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

PNC Construction Co. Ltd. — Appellants
Vs.
CCE, Chandigarh — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri B.L.Narsimhan, Adv., for the Appellant
Shri Sumit Kumar, DR for the Respondents

Date of Hearing : 11.06.2012

Final **ORDER NO. ST/A/599/12-Cus.**

Per Ms. Archana Wadhwa:

After hearing both the sides, we find that demand of duty of service tax of Rs.40,61,153/- stands confirmed along with imposition of penalty of an identical amount u/s 78 and another penalty imposed u/s 76 of the Finance Act, 1994 on the ground that the appellants have provided 'Business Auxiliary Service' (BAS) on toll tax collection in terms of the agreement entered into between them and M/s National

Highways Authority of India (NHAI). They have also undertaken to do the job of road maintenance, road property management, incident management etc. which amounts to providing taxable services falling under the category of BAS.

2. Ld. Advocate appearing for the appellant draws our attention to the agreement entered into between them and NHAI. Their contention is that it was a composite contract which cannot be segregated so as to hold that toll collection services were liable to be taxed. Even in terms of the definition of BAS, the lower authorities have not referred to any clause of the definition of the said services which applies to them. The toll operation cannot be singled out from the contract which includes supply of equipment and maintenance of systems etc. They also pleaded that the demand is barred by limitation in as much as they were under bonafide belief that such toll collection services are not taxable.

3. Rejecting the above contention of the appellants, the lower authorities have held that separate bills stand raised for separate activities. Bill No.7.6 has been raised for toll operation which includes supply of equipment, ticketing, plaza maintenance, toll fee collection and transfer of revenue to their client. In as much as the said services stand covered by the definition of BAS, lower authorities have confirmed the demand.

As regards limitation, Commissioner (Appeals) has observed that service tax is based on self-assessment and the mere fact that the appellants have not taken registration under the service tax law is enough to invoke the extended period against them. He further observed that the case was of mis-declaration of value was found as a result of detection of officers and not as voluntary disclosure by the appellant. As such he upheld invocation of longer period and also imposed penalty.

4. After hearing both the sides, we note that identical issues were the subject matter of the Tribunal's decisions. In the case of Intertoll ICS CE Cons O&MP Ltd. vide Final Order No.ST/A/34/12-Cus, dtd. 23.12.11, the Tribunal observed that NHAI has availed the services of respondents and the said NHAI is not established by Revenue to be business concern or a commercial concern engaged in any business activities. Therefore, providing BAS to such NHAI is not conceivable. Accordingly appeal filed by the Revenue was dismissed.

Similarly in the case of Intertoll India Consultants P.Ltd. reported as 2011(24)STR611(Tri.-Del.), the Tribunal held that toll tax and fee for use of bridge, by retaining the percentage of such collection, the activity cannot be held to be falling under BAS. In the case of Swarna Tollway P.Ltd. reported as 2011(24)STR738(Tri.-Bang.), again the same status was reiterated. As regards limitation, we find that the Tribunal in the case of Brij Motors P.Ltd. reported as 2012(25)STR489(Tri.) has held that when the issue is interpreted by judicial forums in different ways, the extended period cannot be invoked in such a situation.

5. By applying the ratio of all the above decisions to the present case, we find that the activities of the appellants in respect of toll fee collection cannot be held to be a service provided to NHAI falling under the category of BAS. As such we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Pronounced in the open Court on 20/9/12)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I