FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 03/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70043-70044/2018-CU[DB] dated 02/01/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/39/2012	**SHRI VISHWANATH MISHRA** A-8, RUDRA NAGAR PAHARI, P.O. ROHANIA, VARANASI.
2	ST/284/2012	**SHRI MITHILESH CHATURVEDI,** R/O JALALIPATTI, NAI BASTI, P.O. BHULLANPUR, P.A.C. VARANASI.
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**Ms. Stuti Saggi
(Advocate)(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/39/12 & 284/12

Arising out of O/A Nos.144/ST/ALLD/2011 dated 20.10.2011 passed by Commissioner of Central Excise(Appeals), Allahabad.

Shri Vishwanath Mishra
Shri Mithilesh Chaturvedi

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Allahabad RESPONDENT (S)

APPEARANCE

Ms.Jtuti Saggi, Advocate for the Appellant (s)

Shri Gyanendra Kumar Tripathi, AC(A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 02.01.2018

FINAL ORDER NO. 70043-70044/18

Per Mrs.Archana Wadhwa :

Both the cases are being disposed of by a common order as the issue involved in both the cases is identical.

2. The appellants are providing rent a cab services and claimed the benefit of small scale exemption notification no.6/10 dated 1.3.2005, after claiming abatement of 60%.

3. The issue required to be decided is as to whether for the benefit of exemption for small scale service provider in terms of Notification No.6/2005-ST, the aggregate value should be computed after allowing 60% of abatement of the total value so received by the service provider. The lower authorities have held that computation of total value for the purpose of small scale would be inclusive of abatement of 60% whereas the appellants have contended otherwise.

4. The ld.Advocate appearing for the appellant submits that the issue is no more resintegra and stands deidcded by this bench's decision in the case of Shri Ashok Kumar Mishra v. CCE & ST, Allahabad vide Final Order No.71841/2017 dated 29.11.2017. the Bench has observed as under:

> 4. Having consider the rival contention and on perusal of Explanation B to the said Notification No.6/2005-ST dated 01.03.2005, we find that the said explanation authorizes exclusion of consideration received towards providing service which are exempt from whole of service tax leviable thereon. On perusal of the said Notifications No.9/2004 and No.1/2006-ST, we find that 60% of the consideration received is exempted from the whole of the service tax leviable theron. Therefore, we find that for the purpose of calculation of aggregate value as per said explanation B 60% of the consideration received by the appellant for which exemption was admissible does not need to be taken into consideration. We also find from the record that after excluding 60% consideration the aggregate value of clearance for the year 2007-08, 2008-09 and 2009-10 in the present case is within the permissible limit for the exemption under the said Notification No.6/2005-ST dated 01.03.2005 which exempts taxable service from whole of service tax leviable under Section 66 of the Finance Act, 1994. We, therefore, hold that the impugned order-in-appeal is not sustainable.

5. Inasmuch as the issue stands decided, we set aside the impugned order and allow both the appeals with consequential relief.

(Operative part of the order was pronounced in the open Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

sm