REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70069/2015- dated 27/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

SPS Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/50253/2015SM	DROOLY'S CATERING PVT LTD 3/257, VISHWAS KHAND GOMTI NAGAR, LUCKNOW(UP)

Name and Address of Respondent: CCE LUCKNOW, 7-A, ASHOK MARG, LUCKNOW.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH DHARAMENDRA SRIVASTAVA ,&ASSOCIATES,CA 13/392(1) CIVIL LINES KANPUR(UP)

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

S.T.Appeal No.50253/15

Arising out of O/A No.143-ST/LKO/2014 dated 18.09.2014 passed by Commissioner (Appeals) of Central Excise & S.Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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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? : Yes
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.

M/s Drooly's Catering Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava, C.A. for the Appellant (s)
Shri Vikram Kaushik, A.C. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 27.10.2015

Fo ORDER NO. 70069/2015

Per Mr. Anil Choudhary :

The Appellant, M/s Drooly's Catering Pvt. Ltd., is in Appeal against Order-in-Appeal No. 143-ST/LKO/2014 dated 18.09.2014 passed by Commissioner (Appeals) of Central Excise & S.Tax, Lucknow, whereby Levy of penalty of Rs.67,000/- imposed under sections 77 (1) (c) (ii) of the Finance Act, 1994.

2. The brief facts are that there was an audit of the financial records by the revenue audit team and it appeared that the appellant had not deposited service tax on receipt of Rs. 3,24,950/- being taxable service during the period 2010-11. Accordingly, a letter dated 18/1/12 was issued under section 66, 67 and 68 read with section 73 of the Finance Act, 1994 to the party to deposit the service tax with interest due on the receipt of Rs. 3,24,950/-. Further, a letter dated 06/02/12 was given by hand to the representative, Mr Kishan Singh wherein the appellant was asked to produce the financial documents for the financial year 2010 -11, to cross verify the receipt and service tax liability thereupon for the period 2010-11 and 2011-12. However, there was non-compliance and further, letters dated 13/2/12, 17/2/12, 29/2/12 and 2/4/12 were also issued for the desired documents for ascertaining the service tax liability, being the objection raised by the audit team. There being continuous failure to respond to notices for documents summons dated 5/4/12 was issued to Mr. Anil Kishore, Director vide email to appear on 10/4/12. On failure to appear, another opportunity was granted to appear on 24/5/12 to the Director of appellant company, it appeared that the appellant have rendered

themselves liable for penalty under section 77 (1) (c) (ii) and also liable for imposition of penalty under section 77 (1) (c) (iii) and accordingly show cause notice dated 5/6/12 was issued requiring to show cause on the appellant company and its Director as to why not penalty be imposed for non-compliance under section 77 (1) (c) (ii) & (iii).

3. The appellant appeared and contested the show cause notice mentioning therein that they have already deposited penalty of Rs.6,010/- in response to para-1 of audit note and also undertook to deposit service tax of Rs.16,735/- with interest under protest in view of similar SCN issued by additional Commissioner in the previous years. Further the appellant also submitted the photo copy of bill number V455 dated 14/6/2010 for Rs. 3,24,950/- which appeared to be the desired document being required by revenue. The SCN was adjudicated by the superintendent observing that although the desired information was submitted at the time of personal hearing but the same is not sufficient in view of the continuous default in the past prior to issue of SCN and accordingly imposed penalty of Rs. 67,000/- being @Rs.200/-per day for delay of 354 days that is for the period 6/2/12 to 7/11/13. And further penalty of Rs.10,000/- was imposed on the Director Mr.Anil Kishore under section 77 (1) (c) (iii).

4. 'Being aggrieved the appellant and the director preferred appeal before the ld. Commissioner (Appeals) vide the impugned order dismissed the appeals on the ground of limitation. Being aggrieved, the appellant company have filed appeal before this Tribunal. So far as the director is concerned, it is informed that he has not filed further

appeal before this Tribunal and have also deposited the amount of penalty.

5. The ld. Counsel on behalf of the appellant urges that the letter dated 6/2/12 is vague as it does not state which particular document is required. The letter simply states 'financial documents'. It is a fact on record evident from the order-in-original that the document desired was a particular bill dated 14/6/2010 but the same was never asked in particular before issue of SCN. As soon as the appellant came to know of the particular requirement they have complied with the same in the course of personal hearing which is evident from the order in original. Thus the request was vague which could not be understood by the appellant and no penalty is exigible, more so in view of the compliance accepted at the time of personal hearing of the show cause notice. The ld. Counsel further draws my attention that the stand of the appellant that they're entitled to pay service tax on the 20% of the gross receipt being the service element under notification number 12/2003-ST, have been upheld by ld. Commissioner (Appealsa) in appeal number 228-ST/LKO/2014 dated 03/11/14, wherein in the appellant's appeal, it is held that as the appellant maintains proper records of purchase of material's et cetera utilised in the course of the catering service, they are entitled to the benefit of notification number 12/2003. Applicability of notification number 12/2003 was the bone of contention which led to imposition of penalty which is subject matter of this appeal. Accordingly prays for setting aside the penalty imposed upon the appellant company.

6. The ld.DR relies on the impugned order. He further states that in spite of several notices about 6 in number including two summons, the appellant have failed to appear and/or appear and seek clarification as to the exact requirement by the revenue. In this view of the matter the penalty imposed is fit to be confirmed.

7. Having considered the rival contentions I find that although there was some confusion as the document desired was "financial statement/documents", not specifying the particular document, the same led to confusion with the appellant in making timely compliance. Further I find that there is some element of negligence on the part of the appellant also. Further I take notice of the fact that the bone of contention, that is applicability of notification number 12/2003 has been decided in favour of the appellant by the Commissioner (Appeals). I also take notice of the fact that the director of the appellant have already deposited penalty of Rs.10,000/- imposed on the director and not appealed further. It is an admitted fact that the documents required were ultimately filed at the time of personal hearing of the show cause notice. In this view of the matter, taking a liberal view, I set aside the penalty on the appellant company. Thus the appeal is allowed. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001