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: 04/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71033/2016-CU[DB] dated 03/11/2016

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/56021/2014	PAN BUSINESS LISTS PRIVATE LIMITED E-31, SECTOR 8 NOIDA,UP

Name and Address of Respondent

2

C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

AMITOSH MOITRA/ROLI CHAUBEY
A-37 EAST OF KAILASH
NEW DELHI 110065

4 Bar Association, CESTAT, Allahabad

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad -500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

23-11-16

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

Appeal No.ST/56021/2014-CU[DB]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/147-148/14-15 dated 29.08.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida.

For approval and signature:

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

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

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M/s Pan Business Lists Pvt. Ltd. ...APPELLANT(S)

VERSUS

C.C., C.E. & S.T., Noida ...RESPONDENT (S)

APPEARANCE
Shri Amitosh Moitra, CA for the Appellant(s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 03.11.2016

FINAL ORDER NO.- 71033/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is preferred against Order-in-Appeal No.NOI/EXCUS/000/APPL/147-148/14-15 dated 29.08.2014 passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellant a 100% EOU was issued with a show-cause-notice dated 20th March, 2013, wherein at Para 7 of the said show-cause-notice, it was stated that the demand is raised by invoking proviso to Sub-Section 1 of Section 73 of Finance Act, 1994. The appellant was engaged in the manufacture & export of the Computer Software. The appellant had entered into an agreement with Mr. Herman Karacke stationed in Germany for providing professional services for maintenance of Software exported by appellants and being used by their clients in Germany. The consultant used to raise bill on the appellant and appellant have paid the consultant in Foreign Exchange. Such expenditure in Foreign exchange was indicated in their balance sheet. It appeared to Revenue that the remittances made for the above stated purpose were liable to be subjected to provisions of Section 66A of Finance Act, 1994 and appellant being receiver of the services and the service provider i.e. Consultant not having any business establishment in India, the appellant were liable to pay Service Tax on the service charges paid by appellant to the Consultant. Therefore, the said show cause notice had a proposal to demand Service Tax of Rs.14,27,649/- under Section 73 of Finance Act, 1994. The show cause notice also had proposal for the appellant to

pay interest and for imposition of penalty on appellant. The said show cause notice was adjudicated through Order-in-Original No.39/Addl. Commissioner/Noida/2013-14 dated 27.12.2013. Before the Original Authority, the appellant contended that the demand in respect of Service Tax is hit by limitation, since, the show cause notice could not establish that there was any suppression on the part of appellant or there was any intention to evade payment of Service Tax. They had also submitted before the Original Authority that their accounts were audited by Revenue on 13-14th October, 2008 and again on 06.10.2009 and further subsequently, on 04th January, 2010 and therefore, allegation of suppression was claimed to be baseless. The Original Authority did not appreciate the said arguments and confirmed the demand and imposed equal penalty.

3. The appellant preferred appeal before Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) decided the said appeal through Order-in-Appeal No.NOI/EXCUS/000/APPL/147-148/14-15. The appellant submitted before the Ld. Commissioner (Appeal) that the audit for various periods were conducted by the Department and no such objection was raised and during the audit copy of the agreement between the appellant and the consultant in Germany was also submitted to the audit party and that therefore, allegation of suppression is baseless. The Ld. Commissioner (Appeal) dismissed the appeal, preferred by the appellant. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

4. The learned counsel for the appellant has argued that the entire demand is raised by invoking proviso to Sub-Section 1 of Section 73 of the Finance Act, 1994. Further, they were the service recipient and even if they were required to pay Service Tax for the same under Section 66A of Finance Act, 1994, such Service Tax paid was eligible to be availed as Cenvat Credit, and that therefore, they had no intention to evade. He has further submitted that by reading the provisions of said Section 66A with Sub-Rule 3 Clause (ii) of Taxation of Services (provided from outside India and received in India) Rules, 2006, if the services specified in Sub-Clause (zzzg) are provided from outside India and received in India shall be deemed to be services performed in India. Section 66A read with said Rules will mean that the said services were performed in India and therefore, the recipient of the services was not liable to pay Service Tax.

5. Heard the Ld. DR, who has supported the Order-in-Original and Order-in-Appeal.

6. Having considered the rival contentions, we find that entire demand in the show-cause-notice is raised by invoking proviso to Sub-Section 1 of Section 73 of the Finance Act, 1994. The requirement under said proviso is that suppression or misstatement etc. is to be established separately and intention to evade Service Tax is to established separately for invoking said proviso. The appellant are service receiver and they are entitled for credit of Service Tax paid as service receivers, and as a result, it could not be established by

Revenue that the appellant had intention to evade payment of Service Tax. Since, the intention to evade payment of Service Tax could not be established through the said show cause notice, the said proviso was not invokable. As a result, the entire demand has became bad in Law. Therefore, the show cause notice is not sustainable. Since, the show cause notice is not sustainable, the subsequent procceding arising out of same are also not sustainable. We, therefore, set aside the impugned Order-in-Original and Order-in-Appeal and allow the appeal with consequential relief.

(Dictated and Pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
16.11
सहायक पंजीयक / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001