REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,
~~Office,Of Commissioner Of Central Excise,Customs,Service Tax~~, Allahabad-211001

Dated: 06/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70021 /2015- dated 17/09/2015

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/1677/2010	SAINIK SECURITY SERVICE A-11,MAHADEV NAGAR COLONY PANEYPUR, VARANASI

Name and Address of Respondent: COMISSIONER OF CENTRAL EXCISE, ALLAHABAD 38 M.G.MARG, CIVIL LINES, ALLAHABAD.(UP

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH MANOJ KUMAR MISHRA,ADV
c/o Respondent Appellant.

4 Bar Association, CESTAT, Delhi
5 Directer 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, Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

Appeal No. ST/1677/2010

(Arising out of Order-in-Appeal No. 101/ST/ALLD/2010 dated 30.9.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Allahabad).

For approval and signature:

Hon'ble Shri P.S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

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 their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

M/s Sainik Security Service — Appellant

Vs.

Commissioner of Central Excise, Allahabad — Respondent

Appearance:

Shri Manoj Kumar Mishra, Advocate — for Appellant

Shri Rajiv Ranjan, Jt. Commissioner (AR) — for Respondent

CORAM:

SHRI P.S. PRUTHI, MEMBER (TECHNICAL)
SHRI S.S. GARG, MEMBER (JUDICIAL)

Date of Hearing: 17.09.2015

Date of Decision: 17.09.2015

Final ORDER NO. 70021/2015

Per: P.S. Pruthi

This appeal arises out of Order-in-Appeal dated 30.9.2010 passed by the Commissioner (Appeals).

2. The appellant are a security agency and rendered security agency services, which is a taxable service under the Finance Act, 1994. During the period 1.4.2004 to 30.9.2006, the appellant received an amount of Rs.82,48,726/- for providing security agency services to M/s Banaras Hindu University, Varanasi. It was alleged that the appellant willfully suppressed the taxable value based on the amount received by them and therefore evaded Service Tax amounting to Rs.8,93,105/-. A show-cause notice dated 19.3.2009 was issued to them invoking the extended time period in terms of provisions of Section 73(1) of the Service Tax. In adjudication as well as appeal proceedings, it was observed that out of the total tax liability of Rs.8,93,105/-, the appellant had paid Rs.7,81,924/- during the relevant years. They had also filed ST-3 returns regularly. The adjudicating authority confirmed the amount of Service Tax not paid i.e. 1,11,181/- along with interest and imposed penalty under Section 76 as well as equivalent penalty of Rs.1,11,181/- under Section 78 of the Finance Act. In appeal, the Commissioner (Appeals) reduced the demand from Rs.1,11,181/- to Rs.92,497/- for the reason that rate of tax initially was 8% which later was increased to 10.2%. However, the department had considered the rate for the entire period as 10.2%. On the reduced tax payable i.e. Rs.92,497/--, the Commissioner (Appeals) correspondingly reduced the penalty under Section 78 to Rs.92,497/-. He set aside the penalty under Section 76. Subsequent to

the adjudication order, the appellant deposited the remaining amount of Service Tax i.e. Rs.92,497/-.

3. The main ground taken in the appeal is that the Service Tax of Rs.7,81,924/- was paid before the issue of show-cause notice. Further, the appellant had disclosed the true value of taxable services in the ST-3 returns. The show-cause notice could not have been issued invoking the extended time period. The omission to pay the correct amount of tax occurred due to the fact that Banaras Hindu University reimbursed the Service Tax to them @ 8% through out the period in dispute, whereas they should have reimbursed @10.2% from 10.9.2004 when the rate of duty was enhanced. Reliance was placed on the Supreme Court judgment in the case of *Pushpam Pharmaceuticals – 1995 (78) ELT 401 (SC)* and *Commissioner of Central Excise Vs. Busy Bee – (2009) 18 STT 392 (Chennai-CESTAT)*, which held that no penalty is imposable when the act is not deliberate.

4. The learned. AR reiterates the findings of the lower authorities.

5. We find in this case that the value of service declared in the periodical returns i.e. 83,27,454/- is more than the value shown in the show-cause notice i.e. Rs.82,48,726/-. The appellant has placed copies of ST-3 returns on record. There is no challenge by the Revenue to the fact that the ST-3 returns reflect the value of services provided. Therefore, we are in agreement with the learned Counsel's contention that extended period under Section 73(1) is not applicable. Revenue has not been able to establish that there was any fraud or suppression of facts or contravention of any provisions of Service Tax law with intent to evade payment of Service Tax.

5.1 In the circumstances, the genuine omission to pay tax @ 10.2% instead of @ 8% is to be construed as a *bona fide* act. Rather it is for Revenue to explain how the Service Tax returns were not assessed at the appropriate rate of duty. We find no element to invoke the extended time period under Section 73. The demand for the period 2004-05 to 2006-07 for which SCN was issued on 19.3.2009 is clearly time barred. The demand of Service Tax being time barred and consequently not sustainable, the penalty under Section 78 does not survive. Consequently, the demand of Rs.92,497/- and interest thereon is set aside. Penalty under Section 78 is also set aside.

6. The appeal is allowed in above terms.

(Pronounced in Court)

Sd/-
(S.S. Garg)
Member (Judicial)

Sd/-
(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
15.10.15
सहायक पंजीकार / Asstt. Registrar
[illegible] A.T.)
[illegible] 211001
38, M. G. MARG, [illegible] 211001