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

Dated: 14/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70083/2015 dated 08/12/2015

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/SPS

Application	Appeal	Name and Address of Appellant
	ST/1278/2010	NEW JANATA STUDIO 39/52, RAM TIRATH MARG NARAHI BAZAAR LUCKNOW(UP)

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

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH S.N.SRIVASTAVA,ADV
C-5, SECTOR-B
ALIGANJ,LUCKNOW-24

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/SPS
Regional Bench, Allahabad

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

S.T. Appeal No.1278/10

Arising out of O/A No.58-ST/LKO/2010 dated 15.03.2010 passed by Commr. of Central Excise & Service Tax, Lucknow.

For approval and signature:

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

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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 New Janata Studio ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Lucknow RESPONDENT (S)

APPEARANCE

Shri Dushyant Kumar, Consultant for the Appellant (s)
Shri S. L. Karoliya, Asstt.Commr. (D.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 08. 12. 2015

Final order no. 70083/2015

Per Mr. B.Ravichandran :

The appellant is before us against the order-in-appeal dated 15.03.2010 passed by the Commissioner of Central Excise & Service Tax, Lucknow.

2. The appellants are engaged in photography business and running studio. Proceedings were initiated against them for non-payment of service tax under photography services during the period 2004-05. After due process, the original authority confirmed the demand of Rs.43,000/- and imposed penalties under Sections 76, 77 and equal amount of penalty imposed under Section 78 of the Finance Act, 1994. On Appeal, the ld.Commissioner (Appeals) vide the impugned order, upheld the order of the original authority and rejected the appeal. Aggrieved by this, the appellant is before us.

3. The ld.Counsel for the appellant, submitted that case against the appellant is based on the Audit Report and on the basis of IT Return filed by the appellant. He submitted that they are running a small business and the levy of service tax was introduced of photography services in the year 2001. They have started business in the year, 2004 and they are not conversent with the legal provisions. However, they got themselves registered with the Service Tax Department in April, 2005. Regarding quantification of demand of service tax, the ld.Counsel while admitting liability of service tax for the impugned period, submitted that they had substantial income on simple sale of items, like, cameras, camera covers, film rolls etc. He drew our attention to the profit and loss account for the impugned period, which categorically states the amount of receipts towards these sales.

4. The ld.A.R. for the Revenue, reiterated the findings of the impugned order and stated that despite repeated opportunities, the appellant did not

provide documentary evidences to substantiate their claim regarding due sale of various items.

5. We find that the pure sales of materials has no bearing to the service tax liability and cannot be added to the taxable value. This aspect was not examined by the lower authorities. We find that the appellants are liable to service tax during the impugned period on the value of services provided, but not on simple sale of various items, which are not part of tax able service provided to any person. With these facts in position, the demand requires re-working deducting the simple sale of items, which are not connected to any service rendered by the appellant. The service tax liability will stand reduced to that extend.

6. Regarding various penalties imposed by the lower authority, the ld.Counsel submitted that the penalties under Sections 76 & 78, cannot be imposed for the same offence. We find that various judicial pronouncement have clarified that imposition of both the penalties on the same issue, is not legally tenable. Accordingly, penalty under Section 76 is set aside. Penalty under Section 78, will stand to the extent of service tax liability re-worked as above. Penalty under Section 77 is also upheld.

7. Appeal is partly allowed as indicated above.

(Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / 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