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/ 70085/2015 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

Application	Appeal	Name and Address of Appellant
	ST/1708/2010	M.K.PANDEY & ASSOCIATES D-59/71 B,NEAR LAXMI CINEME MAHMOORGANJ VARANASI(UP)
	Name and Address of Respondent	CCE ,ALLAHABAD 38 M.G.MARG, CIVIL LINES ALLAHABAD(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

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.

18/12/15

Asstt. Registrar SPS
Regional Bench, Allahabad

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/ 70086/2015 dated 03/12/2015

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.**

14/12
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/55003/2014	B.S.N.L. TELEPHONE EXCHANGE SECTOR-19, NOIDA UP-201301
	Name and Address of Respondent	CCE ,NOIDA C-56/42, S ECTOR-62 NOIDA(UP).

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH A.K.SHARMA,ADV
26, GODAWARI SHOPPING
CENTRE, SECTOR-37
NOIDA(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
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13 The ICAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

14/12
Asstt. Registrar
Regional Bench, Allahabad

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

S.T. Appeal No.1708/10

Arising out of O/A No.90/ST/Alld/2010 dated 29.09.2010 passed by Commr. of Central Excise & Service Tax, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, 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 M. K. Pandey & Associates ...APPELLANT(S)

VERSUS

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

APPEARANCE

None 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. 70085/2016

Per Mr. Anil Choudhary :

None present for the Appellant, nor any request for adjournment. Accordingly, we have heard the ld.A.R. for the Revenue.

2. The Appellant, M/s M. K. Pandey & Associates, is in Appeal against Order-In-Appeal No. 90/ST/Alld/2010 dated 29.09.2010 passed by Commr. of Central Excise & Service Tax, Allahabad.

3. It is an admitted fact that the appellant is a Chartered Accountant Firm engaged in tax advisory and audit during the financial year 2004-2005. They carried on audit and raised a bill dated 15.09.2004 for Rs.19,836/- (Rs.18,000/- + Service Tax of Rs.1836/-). It is further case of the appellant that the payment for the said bill was received after 31.03.2005, when exemption was granted to the assessee from the service tax upto an aggregate value of taxable services of Rs.4.00 lakhs in a financial year under Notification No.6/2005-Service Tax dated 01.03.2005. It is further case of the appellant that their total receipt during the year 2005-06 being below of threshold limit, was not taxable and further, the appellant refunded the amount of service tax collected from the service receiver vide bill dated 15.09.2004 to M/s CATJEE. A show-cause notice was issued stating therein that as per the provisions of Section 69 read with Rule 4 of Service Tax Rules, 1994, the appellant was required to make an application for registration with the Central Excise Department within 30 days of such service being brought into service tax net, which the appellant failed to do so, as they applied for the said registration only on 09.11.2004. However, the appellant filed their return for half-yearly ended September, 2004 and March, 2006 in due time. It

further appears to Revenue that the appellant had provided taxable services and received Rs.39,672/- towards bill raised dated 15.09.2004 to M/s CATJEE and the said bill does not contain Service Tax Registration Number, which is essential requirement under the provisions of sub-rule (1) of Rule 4A of the Service Tax Rules. Thus, it appears that the appellant received Rs.59,508/- (Rs.19,836/- + Rs.39,672/-) including service tax of Rs.6,071/- (Service Tax of Rs.5951/- + Education Cess of Rs.120/-), which they failed to deposit in the Central Excise Exchequer.

4. The appellant contested the show-cause notice stating that they follow cash system and recognize their income on receipt basis and they did not receive any payments against bill till 31.03.2005 and further, they had refunded the service tax to the service receiver i.e. M/s CATJEE and also produced copy of the Ledger A/c by way of evidence. The show-cause notice was adjudicated observing that threshold exemption has been granted since April, 2005 and no such exemption was available when the bill was raised and accordingly, proposed tax of Rs.6071/ was confirmed along with equal amount of penalty under Section 78 and penalties were imposed under Sections 76 and 77 of the Act. Being aggrieved, the Appellant preferred an Appeal before the ld.Commissioner (Appeals), who has pleased to reject the Appeal upholding the findings of the Order-in-Original dt. 21.12.2009.

5. Being aggrieved, the Appellant is before this Tribunal on the ground that during the financial year, 2004-05, they had no taxable receipts and they had receipts only in the financial year, 2005-06,

which are under threshold exemption limit and as such, the impugned order is fit to be set aside.

6. The ld. D.R. for the Revenue, relies on the impugned order and prays for dismissal of Appeal.

7. We have examined the Notification No.6/2005-Service Tax dated 01.03.2005,, wherein it is mentioned under Para 3.B that receipts for the purposes of Notification, have to be taken as aggregate value of payment receipts consecutively in any financial year. In view of this admitted fact that there is no receipt during the financial year 2004-2005 and the aggregate receipt in the financial year, 2005-06, is below the threshold limit, accordingly, we allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)

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