FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 16/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71131-71133/2016-CU[DB] dated 08/11/2016

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/1758/2010	**ARVIND VEHICLES PVT LTD** 2-3,PRAKASH ENCLAVE,BYE PASS ROAD,AGRA UP
2	ST/1759/2010	**ARVIND MOTORS** 2-3,PRAKASH ENCLAVE,BYE PASS ROAD AGRA,UP
3	ST/1760/2010	**ARVIND MOTORS** 2-3,PRAKASH ENCLAVE,BYE PASS ROAD AGRA,UP

	Name and Address of Respondent
4	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
5	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
6	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

AKHIL GUPTA
(AUTHORIZED
REPRESENTATIVE)
C-4B/293B JANAK PURI, NEW
DELHI-110058

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise. I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

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

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.ST/1758-1760/10-CU[DB]

(Arising out of Order-in-Appeal No. 488-490-ST/APPL/KNP/2010 dated 27/09/2010 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would 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 Department Authorities?	Yes

Arvind Vehicles Pvt. Ltd. (in Appeal No.ST/1758/2010)

Arvind Motors (in Appeal No. ST/1759-1760/2010) **Appellants**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Akhil Gupta, C.A. for Appellants
Shri L. Patra, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/11/2016
Date of Decision : 08/11/2016

FINAL ORDER NO.-71131-71133/2016

Per: Anil Choudhary

These appeals are filed against a common Order-in-Appeal No. 488-490-ST/APPL/KNP/2010 dated 27/09/2010 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

APPEAL Nos.ST/1759 & 1760/10-CU[DB]

2. The issue in these two appeals is whether appellant is liable to pay penalty under Sections 76 and 78 of the Finance Act and whether the appellant, which is a proprietorship concern of Mr. Arvind Bansal, is liable to service tax under the classification of Business Auxiliary Service prior to the period 1st May, 2006.

3. The appellant was issued two separate show cause notices dated 18th February, 2008 in respect of its receipts from two different banks during the period 2003–04 to August, 2007 for payment of Service Tax under the head business auxiliary services under Section 65(105) (zzb) of the Finance Act. The said show cause notices were adjudicated on contest and the proposed tax confirmed and the tax already paid was appropriated and further penalty was levied under Section 76 and 78 of the Act. Being aggrieved, the appellant preferred appeal before Learned Commissioner (Appeals) against both the Orders-in-Original. The ld. Commissioner (Appeals) vide

common Order-in-Appeal rejected the appeals. Being aggrieved the appellant is before this Tribunal.

4. The ld. counsel for the appellant have urged that prior to May 2006, the definition of "Business Auxiliary Service" under Section 65(105) (zzb) of the Finance Act was–"taxable service means any service provided or to be provided to a client by any commercial concern in relation to business auxiliary service." However, vide Notification No. 19/2006–ST with effect from 1st May 2006, the word "commercial concern" was substituted by the word "person". It is further case of the appellant that on and from the amendment of the definition the appellant had suo motu made compliance and paid service tax regularly. In support thereof he has drawn our attention to a letter dated 30/01/2008 written to the Range Supdt of service tax, wherein the appellant categorically stated that they are receiving commission for referring or arranging loans to their customers from the banks. During the period prior to 1st May 2006 being an individual, doing business under the name and style of M/s. Arvind Motors. They believed they are not a commercial concern and accordingly do not fall under the ambit of service tax for the period prior to 1st May 2006, under the head Business Auxiliary Service. Further, they gave the details of service tax paid under Business Auxiliary Service from February 2006 to October 2006. It is further urged that as per CBEC Circular No. 62/11/2003 dated 21st August,

2003. It has been clarified that a commercial concern does not include an individual, in para-1.3 of the said Circular. In any view of the matter, there can be no mala-fide attributed to the appellant nor any case of suppression of facts is made out. It is evident that appellant had suo motu made compliance since the year 2006, before the revenue approached him in the year 2007–08. Accordingly, it may be held that the appellant is not liable to Service Tax under Business Auxiliary Service prior to 01/05/2006 and also penalties imposed may be set aside.

5. The ld. A.R. for revenue relies on the impugned order.

6. Having considered the rival contentions we are satisfied that in view of the fact that the appellant had made suo motu compliance and deposited the tax from the date the definition was amended with effect from 01/05/2006. We hold that no case of contumacious conduct or suppression of facts from the revenue is made out. Accordingly, we hold that the appellant did not liable to service tax under the classification Business Auxiliary Service for the period prior to 1st May 2006. We also delete the penalty imposed under Section 70, 76 & 78 of the Act. Accordingly, these appeals are allowed with consequential benefits.

APPEAL No.ST/1758/10-CU[DB]

7. The issue in this appeal is whether the show cause notice dated 18.02.2008 is against the provisions of the Act and the Rules

demanding tax under the head Business Auxiliary Service for the period 02/09/2006 to 10/05/2007 under the fact that the appellant had been making regular compliances in paying Service Tax under Business Auxiliary Service, as they were registered dealer.

8. Heard the parties.

9. From a perusal of the operative part of the Order-in-Original, it is evident that the appellant had deposited much earlier the adjudicated tax of Rs.11,587/- vide TR-6 challan on 22/03/2007 and 06/06/2007 which has been appropriated and no additional tax was found payable. In view of the admitted fact on record that the appellant had paid the tax prior to issue of the show cause notice, the whole show cause notice is bad and not tenable under the provisions of Section 73 of the Finance Act. Accordingly, the impugned order is set aside. The appeals stand allowed, with consequential benefits.

(Dictated in Court)

Sd/- Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
22.12
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