

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

Dated: 29/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71179/2016-SM|BR| dated 28/12/2016

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/1856/2010	PATI RAM SONU KUMAR CATERING HOUSE 27/77, PATHWARI, BELANGANJ, AGRA (U.P.)
2		Name and Address of Respondent -C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3 Advocate(s) / Consultant(s):

BIPIN GARG & CO. ADVOCATES(ALLD)
 102, MAHALAXMI ENCLAVE (ADJ.
 INCOME TAX OFFICE), STANLEY
 ROAD, CIVIL LINES, ALLAHABAD
 (U.P.)-211001

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

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

Appeal No.ST/1856/2010-ST[SM]

Arising out of Order-in-Appeal No.469-ST/APPL/KNP/2010 dated 13.09.2010
passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

M/s Pati Ram Sonu Kumar Catering House

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT (S)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant (s)

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Revenue (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 28.12.2016

FINAL ORDER NO. - 71179 / 2016

Per Mr. Anil G. Shakkarwar:



The present appeal is filed by the appellant, M/s Pati Ram Sonu Kumar Catering House, against Order-in-Appeal No.469-ST/APPL/KNP/2010 dated 13.09.2009 passed by Commissioner (Appeals), Kanpur.

2. The brief facts of the case are that the appellants were issued with a show-cause-notice dated 30.07.2009, demanding Service Tax of Rs.5,24,515/- on outdoor catering services. There were proposals in the show-cause-notice for interest and penalty. The said show-cause-notice was outcome of the inspection of some other business premises on 29.01.2007. On the basis of some records seized at said some other business premises, investigation was carried out and statement

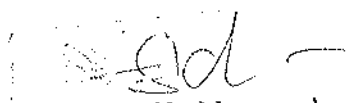
of one Shri Krishan Kumar Agarwal, said to be authorized person and accountant of present appellant, was recorded on 01.05.2007 and from the said statements, the total consideration received by the appellant for the year 2004-05, 2005-06 and 2006-07, were taken into consideration by Revenue. The said show-cause-notice also states that inspite of repeated attempt by Revenue, the appellant had not submitted them the books of accounts or the invoices raised. The said show-cause-notice was decided through Order-in-Original No.43/Addl. Commr./2009 dated 23.11.2009. The Original Authority confirmed the demand of Rs.5,24,515/- and appropriated amount of Rs.2,62,341/- voluntarily deposited by appellant towards Service Tax. The Original Authority imposed penalty of Rs.5,24,515/- under Section 78 of Finance Act, 1994 and separately of equal amount under Section 76 of the same Act. Aggrieved by the said order, appellant preferred appeal before Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) decided the appeal through Order-in-Appeal No.469-ST/APPL/KNP/2010 dated 13.09.2010. The Ld. Commissioner (Appeals) upheld the said O-I-O dated 23.11.2009. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. The learned counsel has argued that the show-cause-notice is based on statement of Shri Krishan Kumar Agarwal and there is no other evidence relied upon by Revenue for issue of show-cause-notice and that the statement of Shri Krishan Kumar Agarwal was not corroborated by any corroborative evidence and that therefore, allegation of evasion of Service Tax of

Rs.2,62,174/- is not substantiated. The learned counsel accepted tax liability of Rs.2,62,341/- and stated that the said amount is already paid and therefore, there was no need to once again conform the same and appropriate.

4. Heard the Ld. DR for Revenue, who has supported the impugned Order-in-Appeal.
5. Having considered the rival contentions, I find that the said show-cause-notice is issued only on the basis of statement dated 01.05.2007, recorded as stated above and the contents of the show-cause-notice have not been corroborated with any other evidence, including the evidence emerging out books of accounts of the appellant or the invoices said to have been issued by the appellant. The appellant has admitted Service Tax liability of Rs.2,62,341/- which was already paid. Therefore, I find that the show-cause-notice is not sustainable in so far as, demand of Rs.2,62,174/- of Service Tax is concerned. Therefore, I set aside the demand of Rs.2,62,174 and all the penalties imposed in the Order-in-Original and the interest directed to be paid on Rs.5,24,515/- In above terms, appeal is allowed.

(Dictated & pronounced in the open Court)


(Anil G. Shakkarwar)
Member (Technical)

Mishra

प्रमाणित नसि / Certified True Copy
20/12
रजिस्ट्रार ऑफ़ टैक्स / Registrar
ऑफ़ टैक्स, एन. टी. ऑ. (सी. टी. ए. टी.)
38, एम. जी. मार्ग, अलहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001