CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 26/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70076/2016 SM dated 27/11/2016

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/2968/2012SM	AXIS ENERGY SOLUTION PVT LTD 466/3, SECTOR-3 SHASTRI NAGAR, MEERUT
	Name and Address of Respondent	CCE, MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT(UP))

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH VINEET KR SINGH,CA
5, NARAIN NAGAR
SECTOR 11, INDIRA NAGAR
LUCKNOW(UP)

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisers 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
Regional Bench, Allahabad

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

S.T. Appeal No.2968/12

Arising out of OIA No.28-ST/MRT-I/2012 dated 26.03.2012 passed by Commr. (Appeals) of Central Excise, & S.Tax, Meerut.

For approval and signature:

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

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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? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Axis Energy Solution Pvt. Ltd. ...APPELLANT(S)

VERSUS

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

APPEARANCE

None for the Appellant (s)
Shri Raj Kumar Maji, A.C. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 27.11.2015

FINAL ORDER NO. 70076/2016

Per Mr. Anil Choudhary :

The Appellant, M/s Axis Energy Solution Pvt. Ltd., is in Appeal against Order-in-Appeal No. 28-ST/MRT-I/2012 dated 26.03.2012 passed by Commr. (Appeals) of Central Excise, & S.Tax, Meerut.

2. The facts in brief are that the appellant is a registered service provider under the classification "transport of goods by Road", "erection, commissioning and installation", and "works contract" services. I show cause notice dated 1/10/09 was issued as it appeared to revenue in the course of scrutiny of ST - 3 return for the period April 2008 to September 2008, wherein the appellant have shown gross amount received 11, 09, 881 on which abatement have been claimed at 67%. It appeared that the abatement is not admissible in view of notification number 15/2004. The appellant was required to pay service tax plus education cess plus H.S.education cess on full value amounting to Rs.1,37,181/- on the gross receipt and thus have made short payment of service tax of Rs.1,28,632/- further for the quarter April to June 2008 the appellant have paid the service tax of Rs. 8,549/ against the payable amount Rs.25,907/- and the short payment made is Rs. 17,358/- and further for the quarter July to September 2008 service tax amounting to Rs.1,11,274/- have not been paid. That the total short payment is of Rs.1,28,632/- and accordingly the appellant was required to show cause as to why the same should not be recovered along with interest and further penalty under section 76 and 77 was was proposed.

The appellant appeared and contested the show cause notice stating that the amount of Rs. 2,09,602/- was received by them in April 2008, but the same pertains to "work contract" during the previous year that is financial year 2007 – 08. During the previous financial year, the contract involved labour and material and that is why, they have deposited service tax on 33% of the realised amount after availing the rebate for material portion. Further, they contended that payment of Rs.1,05,639/- for the period July to September 2008 made by them on 1/9/2008, but due to clerical mistake in mentioning the assessee code the amount was not credited by the bank account and the same was lying in suspense account of the bank. The appellant also produced copy of the bank statement wherein the said amount was debited in their account. Thus, there being no deliberate default, the appellant prayed for dropping of the proposed demand on this issue. The SCN was adjudicated and the proposed demand confirmed for service tax amounting to Rs.1,22,997/- by dropping the amount of Rs.5,635/- which was paid through Cenvat account. Further, interest was also demanded and penalty of equal amount was levied under section 76 and also penalty was levied under section 77 amounting to Rs. 5000/-. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals), who was pleased to dismiss the appeal holding that the appellant is not entitled to abatement of 67% on works contract, and on the 2nd issue of clerical mistake in the challan, it was held that there is nothing on record which shows that the appellant have made reasonable efforts with the relevant bank where the challan was deposited to get the error corrected. Being aggrieved the appellant is before this Tribunal.

3. The appellant is absent in spite of notice. The appellant was also absent on the previous dates in spite of notice being 21/10/15 & 25/5/15. As the facts lie in a narrow compass, it has been decided to dispose of the appeal on merits with the assistance of the ld.DR for the Revenue.. Heard the ld.DR. for the Revenue and perused the records.

4. So far the first issue of abatement is concerned with respect to material component, the liability in works contract is clarified by Honourable Supreme Court in the case of Larsen and Toubro. It has been held by the Apex Court that even prior to 1/6/2007, where the material component is involved in execution of erection, commissioning & installation services, the same shall be classified under the works contract and no tax can be levied on works contract prior to 1/6/07 in absence of there being a specific provision in the finance Act tax to tax service element in the composite contract. In this view of the matter, the appellant succeeds on the 1st ground being abatement in respect to the material component. So far the 2nd issue is concerned regarding deposit of tax, but there being mistake in the assessee code/registration number of assessee, I remand the matter in the Interest of Justice to the adjudicating authority, who shall issue the necessary directions to the concerned bank to allow rectification in the challan and credit the same to the Govt. account. Penalties imposed under Section 77 & 76, are set aside. So far the

interest under Section 75 is concerned, the same shall be recalculated as the payment shall relate back to the date of representation of the Cheque. Thus, the appeal is allowed in part and remanded in part.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
15.2.16
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