FAX : 0532-2400149

REGISTERED / AD

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

Dated: 04/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71214-71221/2016-SM[BR] dated 23/12/2016

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/52266/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
2	ST/52267/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
3	ST/52268/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001

4	ST/52269/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
5	ST/52270/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
6	ST/52271/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
7	ST/52272/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
8	ST/52273/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001

Name and Address of Respondent

9 Janki Devi Chaurasia
W/o Shri Kailashnath Chaurasia,
R/o Trimohani Chowk,,,
MIRZAPUR
,UP

10 Shri Om Prakash
S/o Late B.l. Chaurasia, R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

11 Vaisno Chaurasia
W/o Sri Pradeep Chaurasia R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

12 Luxmi Devi Chaurasia
W/o Sri Vijay Kumar Chaurasia,
R/o Trimohani Chowk,,,
MIRZAPUR
,UP

13 Pradeep Chaurasia
S/o Late B.l. Chaurasia, R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

14 Seema Devi Chaurasia
W/o Rajesh Kumar Chaurasia, R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

15 Meena Devi Chaurasia
W/o Sri Om Prakash Chaurasia, R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

16 Shri Kailashnath Chaurasia
S/o Late B.l. Chaurasia, R/o
Trimohani Chowk,,,
MIRZAPUR
,UP

Other Appellants and Respondents as per Annexure

Copy To
17 Advocate(s) / Consultant(s):

SITA RAM CONSULTANT
C/O R.R.BANOUDHA, 3B/1A,
TEJ BAHADUR SAPRU MARG,
ALLAHABAD-211001

18 Additional Party's Name & Address :

19 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

29 C.D.R. 30 Office Copy 31 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/52266-52273/2014-ST[SM]

(Arising out of Order-in-Appeal No.145-152/ST/Alld./2013 dated 13/12/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Customs, Central Excise & Service Tax, Allahabad **Appellant**

Vs.

Luxmi Chaurasia, Pradeep Chaurasia, Janki Chaurasia, Vaisno Chaurasia, Seema Devi Chaurasia, Meena Devi Chaurasia, Shri Om Prakash, Shri Kailashnath Chaurasia **Respondent**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner &
Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
Shri Sita Ram (Consultant), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 23/12/2016

FINAL ORDER NO....71224-71221/2016

Per: Anil G. Shakkarwar

The present 8 appeals are preferred by Revenue against Order-in-Appeal No.145-152/ST/Alld./2013 dated 13/12/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad. The issue is common in respect of all the eight respondents therefore all these appeals are taken together for decision.

2. Brief facts of the case are that the above stated 8 respondents were issued with a Show Cause Notice dated 21/03/2012, calling upon them to show cause as to why Service tax amounting to Rs.7,71,826/- should not be demanded from all of them put together. The allegations in the Show Cause Notices were that all the eight respondents entered into an agreement with M/s Baazar Retail Ltd., Howrah, for giving away on rent property situated at D 47/102, D 47/188 & D 47/188A, Luxa Road, Varanasi. The said property is jointly owned by the above stated 8 respondents. On enquiry, it appeared to Revenue that the said property was rented out to M/s Baazar Retail Ltd., at the rate of Rs.33/- per square feet per month with clauses for enhancement of rent. For the years 2008 09, 2009-10 & 2010-11, M/s Baazar Retail Ltd. paid rent of Rs.28,51,200/-, Rs.28,51,200/- Rs.28,51,200/-. Further in the year 2011-12 (Upto December, 2011) the rent paid by M/s Baazar Retail Ltd. was Rs.24,59,088/-. The said Show Cause Notice alleged that above stated 8 respondents did not take registration for Service tax, not filed return. The respondents contended before the Original Authority that the rent is received separately by every individual respondent, and that rent earned in a financial year never exceeded small scale service exemption for Service tax by any of the respondent. They also contended before the Original Authority that under Income Tax Laws it has been held by various courts that the mere

execution of documents by co-owners owning the property cannot bring the co-owners together as body of individuals and there must be something more than jointing together and existing documents, and in support of their contention they placed reliance on decision in the case of Income Tax *Versus* Deshamwala Estates reported at 1980 (121) ITR 684. The Original Authority did not appreciate the argument and held that the respondents are an association of persons and confirmed the demand of Rs.10,71,826/- jointly against all the eight respondents put together and also imposed penalties. Aggrieved by the said order appellants preferred appeal before the ld. Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeals through Order-in-Appeal No.145-152/ST/Alld./2013 dated 13/12/2013. The ld. Commissioner (Appeals) has placed reliance on the case of Smt. Bhavna R. Shah & Shri N.G. Shah *Versus* Commissioner of Service Tax, Ahmedabad 2013 (1) TMI 578 & Dinesh K. Patwa *Versus* Commissioner of Service Tax reported at 2012 (10) TMI 67, and stated that this Tribunal has taken a view that there was *prima facie* case that each joint owner of the property is entitled to exemption of threshold limit. The ld. Commissioner (Appeals) has set aside the said Order-in-Original and allowed the appeals. Aggrieved by the said Order-in-Appeal No.145-152/ST/Alld./2013 dated 13/12/2013, Revenue is before this Tribunal.

3. Heard the ld. D.R., Shri Rajeev Ranjan, Joint Commissioner & Shri Pawan Kumar Singh, Superintendent who have taken me through the grounds of appeal and contended that as per the definition of "person" in Section 3(42) of the General Clauses Act, 1897 the respondents are a body of individuals.

4. Heard, Shri Sita Ram (Consultant), for the respondents. He contended that though the agreement for rent was signed through a single document by all the individual co-owners of property, Annexure-1 to the said agreement dated 05/03/2008, very clearly establishes that the Interest Free Security Deposit of Rs.3,56,400/- was paid through individual cheques to all the eight respondents separately and each respondent was paid Rs.44,550/-. Similarly, the rent was paid to individual co-owner by the lessee and there is no joint payment to the "association of persons" and that the individual respondents is receiving income from rent therefore each individual is independent in respect of providing service.

5. Having considered the rival contentions, I find that the ground of appeals stated by Revenue in the said appeal is before me are only about what constitutes "association of persons" I cannot find any ground which establishes that the eight individuals who are respondents can be called "association of persons" through any definition provided by any law, when they have not entered into any agreement to form "association of persons". Even the definition of "person"

Section 3(42) of the General Clauses Act, 1897 states that "person" shall include any company or association or body of individuals. So, since the definition is inclusive, there has to be an association of individuals to become "person" under said Section 3(42) of the General Clauses Act, 1897. Therefore, I do not find any sustainable ground advanced by Revenue in the present appeal. In view of the same I dismiss all the eight appeals filed by Revenue and hold that the respondents shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

16.

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ansari

प्रमाणित प्रति / Certified True Copy
16.1.17
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