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: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/71103/2016-CU[DB]** dated **28/11/2016**

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/Stay/52831/2014	ST/52315/2014	COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX-ALLAHABAD 38...M G MARG... CIVIL LINES,ALLAHABAD, UTTAR PRADESH 211001
			Name and Address of Respondent
2			RAJENDRA PRASAD CONTRACTOR KASHI MORE, F-12, ANPARA,,, SONEBHADRA,,UP

Copy To

3 Advocate(s) / Consultant(s):

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

ST/Stay/52831/2014
APPEAL No.ST/52315/2014-CU[DB]

(Arising out of Order-in-Original No. 154/ST/ALLD/2013 dated 13/12/2013 passed by Commissioner (Appeals) of Central Excise & Customs, Allahabad)

Commissioner of Customs, C.E. & S.T., Allahabad Appellant

Vs.

Rajendra Prasad Contractor Respondent

Appearance:

Shri T.K. Sikdar, Assistant Commissioner (AR) for Appellant
None, for Respondent

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/11/2016
Date of Decision : 28/11/2016

Final ORDER NO....71103/2016.

Per: Dr. Satish Chandra

The present appeal is filed by Revenue against the impugned Order-in-Appeal No.154/ST/ALLD/2013 dated 13.12.2013 passed by the Commissioner (Appeals) Allahabad.

2. Heard Shri T.K. Sikdar learned A.R. for the Department. None appeared on behalf of the assessee, no adjournment application on record.

3. The brief facts of the case are that the respondent assessee is registered under Section 69 of the Finance Act, 1994, with the department of the service tax during the period under consideration. From the impugned order it appears that:-

"The respondent received total of Rs.1,65,79,371/- as gross value of services against taxable services provide to M/s Anpara Power Corporation. Anpara, & appeared to be liable to pay Rs.16,98,7407/- as Service Tax including Ed. Cess & S&H Ed. Cess. They allegedly suppressed the gross value of services & paid Rs.06,54,738/- Service Tax including Ed. Cess & S&H Ed. Cess. They were asked by Superintendent, Central Excise & Service Tax Range, Renukoot-II. Vide letter C. No. ST/Misc/RKT-11/08/20117-628 dated 15.04.2011 to clarify the same but they failed to clarify it. The respondents allegedly have made short payment of Service Tax by Rs.10,44,002/- during the relevant period, to the credit of Central Government, thereby contravening the provisions of Section 68 of the Act read with Rule 6 of the Rules. Thus respondents appeared to have suppressed the material facts from the department by way of not showing the correct amount of gross value received in lieu of providing taxable services and by not paying due service tax. They never allegedly disclosed these facts to the departments and have made allegedly willful mis-statement suppressing the material facts with intention to evade payment of Service Tax. By doing so, they have allegedly made themselves liable for penalty under Section 78 of the Act. Thus the provisions as contained in proviso of section 73(1) were invoked and the demand was extended for the period for five years. The appellants allegedly has not shown actual taxable value in the half yearly return in form ST-3 to the Superintendent, Central Excise Range-II, Renukoot contravening the provisions of Section 70 read with rule 7 of the Rules.

Accordingly a Show Cause Notice No.697 Joint Commr./Alld/2011 dated 03.10. was issued by the Joint Commissioner, Central Excise & Service Tax, Cominnssionerate, Allahabad, requiring the respondents to show cause as to why:-

(i) Service tax amounting to Ra.10,44,0027-should not be demanded and recovered from them alongwith appropriate interest under the proviso to Section 73 (1) of the Act r/w Section 75 of the Act.

(ii) Penalty should not be imposed upon them under section 76 of the Act for violation Section 68 of the Act read with Rule 6 of the Rules.

(iii) Penalty should not be imposed upon them under section 76 of the Act for.

(iv) Penalty should not be imposed upon them under Section 78 of the Act.

That the respondents submitted their reply in defence vide their letter dated 2.7.2012 inter alia stating that they did the work in Anpara "A" & "B" Thermal Power Station as per work order allotted to them. They had to collect the coal lying at different places within the power generating unit and transport the same to trunk hopper situated near about 4 or 5 Km within the campus of Power station for which they were paid Service Tax at different rates i.e. 35%, 40% and 70% as fixed by the service receiver. Accordingly whatever amount of Service Tax received by them was paid honestly to the Government Account on TR-6 and GR-7 challans. The respondent had also submitted the copies work order allotted to them."

4. From the above, it appears that the Commissioner (Appeals) ha~~ve~~s examined the issue in detail along with the evidence and the same appears reasonable in the peculiar facts and circumstances of the case specially when either in SCN or in OIO, the adjudicating authority, has proceeded to segregate the portion of the work executed in the contract while confirming the demand nor he took pain to observe the nature of work while determining tax liability. In absence of any specific findings by the department, we are of the view that the service tax paid by the appellant on the basis of receipts under the contract is appropriate. Therefore, the differential service tax as

confirmed in the OIO is having no locus standi and is liable to be dropped. Accordingly the penalties imposed are also not called for.

4. In view of the above, we up hold the order passed by the Commissioner (Appeals) along with the reason mentioned therein.

5. In the result, the appeal filed by the department is dismissed and stay application is also disposed of.

(Dictated in Court)

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

-Sd-
(Justice Dr. Satish Chandra)
President

akp