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: 14/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70806/2016-CU[DB] dated 05/09/2016

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/52864/2014	**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		VIKRAM COSTRUCTION HUT NEAR SENIOR QUARTER, RENUKOOT, SONEBHADRA,, SONEBHADRA,,UP

Copy To

3Advocate(s) / Consultant(s):SH PUNIT KUMAR UPADHYAY,ADV
D-403, SANGAM LINK APPTT
BAGAMBARI ROAD, ALLAHPUR
ALLAHABAD-211006

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

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.ST/52864/2014-CU[SM]

(Arising out of Order-in-Appeal No. 166-ST/ALLD./2013 dated 30/12/2013 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

For approval and signature:

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

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

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

Vs.

M/s. Vikram Construction **Respondent**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Appellant
Shri Punit Kumar Upadhyay, Advocate for Respondent

CORAM:

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

Date of Hearing : 05/09/2016
Date of Decision : 05/09/2016

FINAL ORDER NO. 70806/2016..........

Per: Anil Choudhary

The issue in this appeal is whether the Commissioner (Appeals) has rightly deleted the penalty imposed under Section 77 and 78 and extended the benefit of Section 80 of the Finance Act, correctly.

2. Heard the parties.

3. The admitted facts of the case are that the respondent assessee is a contractor of M/s. Hindalco Industries Ltd. & providing several services in the nature of 'Manpower Recruitment Agency Service', 'Cargo Handling Service', 'Cleaning Service', 'Maintenance and Repair Service', 'Commercial and Industrial Construction Service' etc. SCN dated 22/10/2010 was issued invoking the extended period of limitation for the period 2005-06 to 2009-10, demanding Service Tax of Rs.15,47,652/- with further proposal to impose penalties. The SCN was adjudicated on contest vide Order-in-Original dated 08/08/2011, confirming the proposed demand with interest and further penalty of Rs.5000/- was imposed under Section 77 and penalty equal to tax was imposed under Section 78 of the Act. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who vide the impugned order have accepted the contention of the assessee that against taxable amount of Rs.1,16,20,634/- , tax have been paid on Rs.12,20,329/- vide GAR-7 Challan dated 05/03/2012, which was prior to the date of Order-in-Original, i.e. during the pendency of the adjudication proceedings. It is further observed that the appellant have also deposited the interest of Rs.6,69,343/- vide

Challan dated 03/11/2013. The ld. Commissioner (Appeals) also took notice that several show cause notices have been issued on similarly situated assessees in the same locality and due to unawareness or confusion, he did not charge Service Tax from their service receivers. Further, taking ~~a~~ notice that the respondent have deposited the Service Tax along with interest, although, they have not charged the same from their service receiver due to unawareness and as such there is reasonable cause for failure to deposit the Service Tax and no cause of deliberate defiance of law or evasion of tax is made out. Accordingly, ld. Commissioner (Appeals) extending the benefit of Section 80, deleted the penalty imposed under Section 77 and 78 of the Act.

4. I find that the issue is no longer res-integra in view of the ruling of Hon'ble Allahabad High Court, in the case of H.M. Singh Vs Commissioner of Central Excise and Service Tax, reported at LAWS (ALL)-2014-8-115, wherein by judgment dated 25/08/2014, Hon'ble High Court have taken notice that at the material time there was a general mass unawareness among the service providers on which the service tax was liable to be deposited particularly on the component of provident fund, received from the recipient of service to whom the "Manpower Services" were provided. The Hon'ble High Court further held that under such facts and circumstances, there was no fraud, collusion, willful misstatement or suppression of facts or any contravention with any intent to evade the payment of tax. The Hon'ble High Court also relied on the Ruling of Hon'ble Supreme

Court in the case of Anandan Nishikawa Company Limited AIR 2005 SC 3660, wherein it have been held– 'it is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.' Accordingly, the Hon'ble High Court deleted the penalty, which was confirmed by the Tribunal. The facts of the present case are covered ~~on~~ by the aforementioned ruling of the Hon'ble High Court. Accordingly, the appeal by Revenue is dismissed. The respondent assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated in Court)

-Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp