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

Dated: 28/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70730-70731/2016-SM[BR] dated 12/08/2016

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/55827/2014 &st/55857/2014	NAGAR PALIKA PARISHAD TOWNHALL MUZAFFARNAGAR U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005
3		NAGAR PALIKA PARISAD TOWN HALL,, MUZAFFARNAGAR ,UP

Copy To

4Advocate(s) / Consultant(s):

Ankur Jain, Adv.
C-125,METRO PLAZA, DELHI ROAD, MEERUT,UTTAR PRADESH

5 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal No.ST/55827-ST[SM] & 55857/2014-CU[SM]

Arising out of Order-in-Appeal No.15-ST/MRT-I/2014 dated 25.04.2014 passed by Commissioner (Appeals), Customs, Central Excise & S. Tax, Meerut.

For approval and signature:

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

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3. Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

Nagar Palika Prasihad (In appeal No.55827/2014)
Commissioner of Central Excise & Service Tax, Meerut-I (In Appeal No.55857/2014) ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, & S.T. Meerut-I, (In appeal No.55827/2014)
Nagar Palka Parishad, Muzaffarnagar, (In Appeal No.55857/2014). ...RESPONDENT (S)

APPEARANCE

Shri Ankur Jain, Advocate for the Appellant (s)
Shri Ashok B. Kulgod, Assistant Commissioner, (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 12.08.2016

FINAL ORDER NO. 70730-70731/2016

<u>Per Mr. Anil Choudhary :</u>

Both the appellants, Nagar Palika Parishad and Revenue, have filed these cross appeals. Being aggrieved with the Order-in-Appeal dated 25.04.2014, passed by the Ld. Commissioner(Appeals), Meerut-I.

2. The brief facts are that the appellant is a Municipality. The appellant received rental income by way of Renting of shops and they also received consideration for use or sale of space for the purpose of advertisement, etc. That for the first time, the Revenue initiated inquiry vide letter dated 06.07.2010, asking for details of collection of rent, received by them since 2006-07 and also details of consideration received from advertisements agencies. In response thereto, the appellant filed details in February, 2011 and thereafter, on basis of such details, the Revenue issued show-cause-notice dated 03.07.2012 invoking the extended period and demanding duty for the period of June, 2007 to December, 2011, totaling Rs.13,90,767/- along with interest and further proposing penalty under Section 76, 78 & 77 of the Act. In response to the show cause notice, it appears that the appellant did not file any reply nor they appeared for personal hearing and accordingly vide ex-parte order of adjudication dated 31.12.2013, the proposed demand were confirmed with equal amount of penalty under Section 78. Further, penalty was imposed under Section 76 and Section 77 of the Act.

3. Being aggrieved, the appellant preferred appeal before the Ld. Commissioner(Appeals) who vide the impugned order was pleased to allow the appeal in part, confirming the demand of service tax but holding that the appellant is not liable to penalty under Section 76 and Section 78. However, the penalty under Section 77 of Rs.10,000/- was confirmed.

4. The appellant is in appeal, being aggrieved by the confirmation of demand for the extended period, where as the Revenue is in appeal aggrieved by deletion of penalty under Section 76 & 78 of the Act.

5. Heard the parties.

6. Having carefully considered the rival contentions, I find that the appellant is a Municipality, a Statutory body under the Control of the State Government. It is further evident that they have maintained proper records of their transactions. It is further evident that service tax was not paid in absence of advise from their competent Authority and/or from the side of Revenue from the date of imposition. It is further fact on record that after receipt of the show cause notice, in close proximity of that, the appellant took registration and have started paying the service tax both on renting of immovable property and sale of space for advertisements. It is further evident that the Ld. Commissioner (Appeals) have found that there is no element of fraud or suppression on the part of the appellant-Nagar Palika Praishad and accordingly have deleted the penalty under Section 76 & 78

of the Act. I also find that under similar facts and circumstances, this Tribunal have in a catena of decisions under similar facts and circumstances have held that in absence of contemptuous conduct and suppression of facts on the part of Municipality or a Statutory body, the demand for extended period cannot be sustained. It was so held by this Tribunal in the case of Nagar Palika Parishad, Shamli, Muzaffarnagar, in Final Order No.A/52604/2015-SM[BR] dated 18.08.2015, in Service Tax Appeal No.60214/2013-SM, wherein this Tribunal observing that once it is held that there was reasonable cause for failure to pay tax and the penalties have been deleted, as a corollary invocation of the extended period of limitation is equally and unjustified.

7. Accordingly, following the precedent Ruling of this Tribunal, I am satisfied the same is applicable squarely in the facts of the present case. Accordingly, I hold that the appellant-assessee is not liable to pay tax for the extended period and shall be liable to pay the tax only for the normal period with interest. The appellant-Nagar Palika Parishad is directed to calculate the tax and interest payable for the normal period, deposit the same within a period of 45 days from the date of receipt of a copy of this order, and give intimation to the Revenue for verification. On such verification being completed, if any discrepancies is pointed by Revenue, the same shall be made good by the appellant-Nagar Palika Parishad.

8. Thus, appeal No.ST/55827/14 by assessee, is allowed and Appeal No.ST/55857/14 by Revenue, is dismissed. I, however, make it clear that the penalty under Section 77 has been not interfered with. The appellant will be entitled for appropriation of taxes already paid for the period in dispute.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

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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