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: 23/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71567/2017-SM[BR] dated 21/11/2017

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
1	E/833/2011	**India Yamaha Motors Pvt Ltd** Great Eastern Center, 70 Nehru Palace New Delhi
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

KNM & Partners Law Offices,
I FLOOR, THE GREAT EASTERN CENTER,
70, NEHRU PLACE, BEHIND IFCI TOWER,
NEW DELHI,

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No.E/833/2011-EX[SM]

(Arising out of Order-in-Appeal No.394/ST/APPL/NOIDA/2010 dated 31.12.2010 passed by Commissioner of Central Excise & Customs, Noida)

India Yamaha Motors Pvt Ltd. — Appellant

Vs.

C.C. & C.E. & S.T.- Noida — Respondent

Appearance:
Shri Vineet Sinha (Adv) — for Appellant
Mohd. Altaf (AC) AR — for Respondent

CORAM:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial)

Date of Hearing & Date of Decision : 21/11/2017

FINAL ORDER NO-...71567/2017....

Per: Mrs. Archana Wadhwa

The appellants are engaged in providing services falling under the category of Intellectual Property, GTA and Business Auxiliary Services. It is seen that during the period in question, there were delays in filing the ST-3 returns as also in payment of services tax ranging from 1 day to 137 days. The duties were belatedly deposited by the appellant along with interest.

2. In the above scenario, proceedings were initiated against them for imposition of penalty which stands imposed by the Lower Authorities in terms of the provision of Section 76 of the Finance Act.

3. The challenge is to imposition of penalty under Section 76 of the Finance Act, 1994. The appellant's contention is that there is no malafide on their part and the service provided by them were

duly reflected in their accounts maintained in the ordinary course of the business. In the absence of any misstatement or supression with intent to evade payment of duty, imposition of penalty is not called for. Infact, learned advocate submits that inasmuch as entire service tax alongwith interest was deposited before the issuance of the show cause notice, there was no need for issuance of the notice and the proceedings should have been held to be conclusive in terms of the provisions of section 73 of the Finance Act.

4. After hearing learned AR and after going through the impugned order I find, that the Hon'ble Karnataka High Court in the case of Commissioner of Service Tax Banglore Vs. Master Kleen: 2012 (25) S.T.R. 439 (Kar.) has observed that if the payments of service tax have been made alongwith interest before the issuance of the show cause notice, there is no requirement of issuance of the notice in terms of section 73 of the Act. Admittedly, in the present case, the appellant has not been attributed with any malafide, thus, there is no justification of imposition of penalty. Accordingly while upholding the confirmation of demand and interest, as not challenged by the appellant, penalty imposed under section 76 is set aside. Appeal is allowed in above terms.

(Dictated and pronounced in Court)

प्रमाणित प्रति/Certified True Copy
14/12/17
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-2...
38, M.G. MARG, ALLAHABAD

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS