FAX : 0532-2400149

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

Dated: 13/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70560/2017-SM[BR] dated 26/05/2017

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/1114/2010	**A. V. TRADE AND TRANSPORT,** A-28, MOONLIGHT APARTMENTS, 70, I.P.EXTENSION, NEW DELHI.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3Advocate(s) / Consultant(s):

Rohit Garg, C.A.
8, ADVOCATE CHAMBERS,
RDC RAJ NAGAR,
GHAZIABAD,UTTAR PRADESH

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. 1

APPEAL No.ST/1114/2010-ST[SM]

(Arising out of Order-in-Appeal No. 104-ST/GZB/2010 dated 18/06/2010 passed by Commissioner of Central Excise (Appeals), Meerut-I Camp Office, Ghaziabad)

M/s A.V. Trade and Transport — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri Rohit Garg, Chartered Accountant, — for Appellant
Shri Pawan Kumar Singh, Supdt (AR), — for Respondent

CORAM:

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

Date of Hearing : 26/05/2017
Date of Decision : 26/05/2017

FINAL ORDER NO...70560/2017......

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 104-ST/GZB/2010 dated 18/06/2010 passed by Commissioner of Central Excise (Appeals), Meerut-I Camp Office, Ghaziabad.

2. The brief facts of the case are that the appellants are C & F cum repacking agent of M/s Tata Chemicals Ltd. for carrying and forwarding activities and repacking of Tata salt from bulk pack to small pack. The officers of Central Excise visited the appellant's factory premise on 23.03.2006. On the basis of investigation appellants were issued with a

show cause notice dated 13.11.2006 by invoking proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 for the period from December, 2004 to March, 2006. The said show cause notice raised a demand of service tax of Rs.2,28,120.24/-. Further, there was proposal for imposition of penalty. The issues involved in the said show cause notice was related to reimbursement of expenses by the service receiver and liability of service tax on packaging services w. e. f. 16.06.2005 and on storage and warehousing services w.e.f. December, 2004. On contest the issue was decided through Order-in-Original dated 23.09.2009. The original authority confirmed the demand and imposed penalty under Section 76 and 78 of the Finance Act, 1994. Aggrieved by the said order, appellants preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has allowed deduction of value of Rs.4,08,302.84/- from the assessable value for the purpose of said demand involved on the reimbursable expenses namely loading and unloading charges and godown rent etc. involving period prior to 13.05.2005. Further, the first appellate authority held that Section 78 is not invokable in the present case. Further, the learned Commissioner (Appeals) reduced the penalty under Section 76 ibid to Rs.10,000/-. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Chartered Accountant for appellant. He has submitted that it is settled that service tax is not to be levied on reimbursable expenses. Further, he has relied on the ruling of Hon'ble High Court of Delhi in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs Union of India reported at 2013 (29) S.T.R. 9 (Del.). He has further relied on the Final Order passed by this Tribunal in the case of Amit Sales Vs Commissioner of Central Excise, Jaipur-I reported at 2017 (47)

STR 156 (Tri.-Del). He further submitted that Hon'ble High Court of Delhi has held that 'service tax cannot be levied on reimbursable expenses'. He has further contended that through para-11 of said show cause notice proviso to Sub-section (1) of Section 73 of Finance Act, 1994 was invoked whereas the justification for the same was absent from the said para-11 and therefore, the demand for the period up to November, 2005 is hit by limitation.

4. Heard the learned A.R. for Revenue, who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, I find that this Tribunal in the above stated case of Amit Sales (supra) has clearly held that the reimbursable expenses cannot be added in the assessable value of the C & F services. Further. I find that the contention raised by the learned Chartered Accountant that there were no grounds stated in the said para-11 of show cause notice for invoking the extended period. I find that there are no grounds stated in the said para-11 of show cause notice for invoking the provisions of proviso to Sub-section (1) of Section 73. Therefore, I hold that the said show cause notice is not sustainable for extended period. I find that the learned Commissioner (Appeals) has allowed deduction of reimbursable expenses up to 13.05.2005. I hold that deduction of reimbursable expenses is admissible for entire period of said show cause notice. I therefore, remand the matter to the original authority to re-determine the service tax liability taking into consideration that the assessable value should not include reimbursable expenses during the entire period for determination of service tax liability

and determine service tax liability within the normal period of limitation from the date of issue of the show cause notice. So, for redetermination of service tax liability, the matter is remand to the original authority. While deciding the matter in denovo proceedings the original authority should not exceed the penalties sustained in the impugned Order-in-Appeal.

6. In view of the above directions, the appeal filed by the appellant is allowed by the way of remand to the original authority after setting aside the impugned Order-in-Appeal.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

akp

प्रमाणित प्रति/Certified True Copy
19/06/2017
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