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: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70963/2017-CU[DB] dated 29/08/2017

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/MISC/70226/2017	ST/1371/2011	**GULSHAN RAI JAIN-II** 221, NEW GANDHI NAGAR, GHAZIABAD (U.P.)
			Name and Address of Respondent
2			-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

J. K. Mittal & Co,Adv
A-15, THIRD FLOOR,
PRIYADARSHINI VIHAR,
DELHI
110092

4 Bar Association, CESTAT, Allahabad

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

6 M/s Cemax 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/MISC/70226/2017
APPEAL No.ST/1371/2011-CU[DB]

(Arising out of Order-in-Original No. 34-35/COMMR./GZB/2010 dated 11/01/2011 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s Gulshan Rai Jain-II **Appellant**

Vs.

Commissioner of Customs, Central Excise &

Service Tax, Ghazibad **Respondent**

Appearance:

Shri S.K. Mittal, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR). for Respondent

CORAM:

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

Date of Hearing : 29/08/2017
Date of Decision : 29/08/2017

FINAL ORDER NO.- 70963/2017..........

Per: Anil G. Shakkarwar

Heard the parties on Miscellaneous Application filed for early hearing of appeal and Miscellaneous Application is allowed and with the consent of both the parties appeal is taken up for hearing and decision. The present appeal is arising out of Order-in-Original No. 34-35/COMMR./GZB/2010 dated 11/01/2011 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad.

2. The brief facts of the case are that appellants were issued with a show cause notice dated 17.03.2010 for the period from 16.06.2005 to 31.03.2008 wherein it was stated that the appellant was engaged in providing services of construction of residential complex, classifiable under Sub-clause (zzzh) of Clause (105) of Section 65 of the Finance Act, 1994. It was alleged in the said show cause notice that the appellant neither applied for service tax registration nor paid service tax on the taxable receipts. Therefore, they were called upon to show cause, as to why service tax amounting to Rs.43,93,375/- should not be recovered from them under proviso to Sub-section 1 of Section 73 of the Finance Act, 1994. Before the said show cause notice was adjudicated another show case notice was issued to the appellant on 17.05.2010 wherein it was alleged that the said show cause notice was covering a period for the financial year 2005-06 to 2008-09 and it was stated in the said show cause notice that appellant registered with the Service Tax Commissionerate at Ghaziabad on 03.10.2008 and that they provided services such as 'Construction of Residential Complex Service', classifiable under Sub-clause(zzzh) of Sub-section (105) of Section 65 of the Finance Act, 1994, Commercial or Industrial Construction Service, service provided in relation to construction of civil Structures and Erection,

Commissioning and Installation Service. Through the said show cause notice dated 17.05.2010 appellant was called upon to show cause, as to why service tax amounting to Rs.4,20,86,430/- for the period from April, 2005 to March, 2009 should not be demanded from them under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994. On page-24 of the said show cause notice, it was alleged that appellant appeared to have suppressed the value to taxable service rendered during the period from 2005-06 to 2008-09 and therefore proviso to Sub-section 1 of Section 73 of the Finance Act, 1994 was being invoked. On contest both the show cause notices were adjudicated together through the impugned Order-in-Original dated 11.01.2011 wherein the original authority ordered the merger of proceeding initiated through the show cause notice dated 17.03.2010 and the show cause notice dated 17.05.2010. After ordering the said merger of the said two show cause notices, original authority had confirmed the demand of Rs.4,20,86,430/- and ordered for appropriation of duty amounting to Rs.1,42,11,732/- and imposed penalty of Rs.2,56,000/- and another penalty of Rs.5crores under Section 78 of the Finance Act, 1994. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant who have submitted that the show cause notices are not sustainable

on merit and further pointed out that show cause notice dated 17.03.2010 was issued for extended period from 16.06.2005 to 31.03.2008 and in the said show cause notice it has not been stated as to why proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 was invoked. He has further submitted that after issue of show cause notice dated 17.03.2010 covering the period from 16.06.2005 to 31.03.2008 another show cause notice dated 17.05.2010 based on the same facts was issued covering the period from 2005-06 to 2008-09 and the second show cause notice was issued by invoking proviso to Sub-section (1) of 73 of the Finance Act, 1994 for the extended period. He further submitted that the first show cause notice is not sustainable because the reason why extended period could be invoked have not been stated nor the appellant was put on notice to the extend of the same and it was clearly provided in law that without assigning any reason for invoking said proviso, period cannot be extended. Therefore, the said show cause notice is not sustainable in law. The show cause notice dated 17.05.2010 was based on the same facts on the basis of which the said show cause notice dated 17.03.2010 was issued and as held by Hon'ble Supreme Court in the case of M/s Nijam Sugar Mills Ltd. Vs Commissioner of Central Excise, Andhra Pradesh reported at 2006 ~~(199)~~ (197) ELT 465 (SC) wherein it is ~~stated~~ held that the show cause notice for the extended period cannot be issued on the same facts if earlier show cause notice on the same facts has been issued. Therefore, he contended that the show cause notice dated 17.05.2010 is also not sustainable.

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

5. Having considered the rival contentions and on perusal of records, we do not wish to go into the merits of case. We accept the ~~agreements~~ arguments put forth by the counsel for the appellant. We do not find any of the two show cause notice to be sustainable on limitation. We, therefore hold that both the show cause notices dated 17.03.2010 and 17.05.2010 are not sustainable. We, therefore set aside the impugned Order-in-Original and allow the appeal. Appellant shall be entitled for consequential relief, as per law.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
25/09/17
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