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: 28/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71661/2017-SM[BR] dated 23/11/2017

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/1437/2011	**VIROLA INTERNATIONAL (UNIT-II)** 17/4, A-6, Mathura Road, Runkata, Agra.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3 Advocate(s) / Consultant(s):

Ms. Surabhi Sinha (Adv.)
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

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.ST/1437/2011-ST [SM]

(Arising out of Order-in-Original No.10/ST/Commissioner/2011 dated 26/04/2011 passed by Commissioner, Central Excise, Kanpur)

Virola International (Unit-II) **Appellant**

Vs.

C.C.E.- Kanpur **Respondent**

Appearance:

Ms. Surabhi Sinha (Adv) for Appellant

Shri Gyanendra Kumar Tripathi, (AC) AR for Respondent

CORAM:

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

Date of Hearing : 23/11/2017
Date of Decision : 23/11/2017

FINAL ORDER NO- 71661/2017

Per: Mrs. Archana Wadhwa:

The challenge in the present appeal is only to imposition of penalty in terms of section 76, 77 and 78 of the Finance Act, 1994.

2. As per the facts on record the appellant is engaged in manufacture of Footwear and utilized the services of Foreign Commission Agents for the purpose of getting orders from the

foreign countries. Inasmuch as the said foreign commission agents were not having in any office in India, the service tax liability fell upon the appellant, on reverse charge basis.

3. Accordingly, demands were raised against them for the period 01.04.2004 to 31.03.2007. While adjudicating the said show cause notice, the Commissioner observed that the duty liability would fall upon the appellant only w.e.f. 18.04.2006, when the provision of section 66A were introduced and in terms of the Hon'ble Bombay High Court decision in the case of Indian National Shipowners Association Vs. Union of India : 2009 (13) STR 235. Accordingly, the adjudicating authority appropriated the duty and interest paid by the appellant before the issuance of the show cause notice, by holding liability to be effective from 18.04.2006. He also imposed penalty under the said sections of the Finance Act.

4. The challenge in the present appeal is only to imposition of penalties. The learned advocate appearing for the appellant submits that the law was not clear during the relevant period and the same was clarified with the Bombay High Court's decision in above judgment in the case of Indian National Shipowners Association Vs. Union of India : 2009 (13) STR 235. Inasmuch as the law was not cleared, no malafide would be attributed to them so as to invoke penal provisions. She also submits that the entire duty alongwith the interest having been paid prior to the show cause notice, there was no requirement for issuance of the notice in terms of section 73

of the Finance Act. For the above provisions reliance is placed upon Karnataka High Court decision in the case of Commissioner of Central Excise, Bangalore-III Vs. Apollo Power Systems (P) Ltd.: 2017 (347) E.L.T. 71 (Kar.) as also of the Hon'ble Allahabad High Court decision in the case of Commissioner of Customs & Central Excise Vs. Supreme Industries Ltd.:2016 (341) E.L.T. 607 (All.)

5. Learned AR appearing for the Revenue reiterates the reasoning of the lower authorities in imposing penalties and submits that inasmuch as the assessee is expected to know the law and the appellant having not paid the service tax during the relevant period, are liable to met with penalties.

6. After appreciating the submissions made by both the sides I find that the during relevant period law was not clear and was subject matter of litigation before various courts. It is only with a declaration of law by the Hon'ble Bombay High Court decision in the case of Indian National Shipowners Association Vs. Union of India : 2009 (13) STR 235, that the levy on reverse charge basis was upheld w.e.f. 18.04.2006. The appellant have already paid the said duty alongwith interest. As such I find no justification for imposition to penalty upon them. The same is accordingly set aside. At this stage learned advocate submits that inasmuch as the demand was raised for the period prior to 18.04.2006 and stands confirmed by the adjudication authority only w.e.f. 18.04.2006, they have deposited the excess duty alongwith excess interest and the

lower authority be directed to calculate the correct amount of duty and interest. For the said purpose, I direct the lower authority to do the re-quantification accordingly.

7. The appeal is disposed of in above manner.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

प्रमाणित प्रति/Certified True Copy
01/01/18

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

GS