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: 01/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70411-70412/2017-CU[DB] dated 18/04/2017

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/1455/2011	**ANKUSH CHAWLA,** 116-B, DARBHANGA COLONY, ALLAHABAD.
2	ST/1577/2011	**SH. DHEERAJ SINGH,** 44/13, LOWTHER ROAD GEORGE TOWN, ALLAHABAD.
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Dharmendra Srivastava & Associates
96/11, B.P.SRIVASTAVA MARKET,
PARADE,
KANPUR,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.ST/1455 & 1577/2011-CU[DB]

(Arising out of Order-in-Appeal Nos. 79/ST/ALLD/2011 dated 30/06/2011 & 78/ST/ALLD/2011 dated 29/06/2011 both passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

Shri Ankush Chawla,

Shri Dheeraj Singh, **Appellants**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant, for Appellants
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondents

CORAM:

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

Date of Hearing : 18/04/2017
Date of Decision : 18/04/2017

FINAL ORDER NOs.-70411-70412/2017

Per: Anil Choudhary

The present appeals are filed by the appellants-assessee against Order-in-Appeal Nos. 79/ST/ALLD/2011 dated 30/06/2011 & 78/ST/ALLD/2011 dated 29/06/2011 both passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.

2. The issue in these appeals is whether under the facts and circumstances, the appellants are entitled for cum-duty benefit and whether the penalties imposed under Sections 77 and 78 are sustainable.

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3. The brief facts of the case are that the appellants herein were providing service under the category of 'Business Auxiliary Service' to their principal, M/s eBiz.com Pvt. Ltd., Noida. The said company was provided 'online information and data processing and retrieval services' and charges fee from the recipient of online coaching. The recipients, like these appellants who create further chain of clients for the said company are called 'Business Associates' and they get commission from the said company, for the service provided that is for creating clients for the company for online coaching. Further, facts on record, which are not disputed, are that these appellants did not charge any service tax, nor they collected any amount towards service tax. Further, undisputed fact is that these appellants had deposited the service tax on cum-duty basis prior to the issue of show cause notice, along with interest under intimation to the Department. This fact is obtained from the show cause notice, wherein there is proposal to appropriate the amount already deposited along with interest, which have already been deposited.

4. The learned Counsel for the appellant further urges that service tax have been demanded without giving the cum-duty benefit and further penalty have been imposed under Section 77 and 78 of the Act. The learned Counsel urges that under the facts and circumstances, the benefit of cum-duty calculation of tax may be allowed and the penalties may be set aside for the ends of Justice. He further urges that under the facts and circumstances, there is no deliberate default, as the appellants being new in the field of business

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and they were not aware with the provisions of service tax, which resulted into non-compliance.

5. The learned A.R. for revenue has relied on the impugned order but at the same time, has not disputed the facts on record.

6. Having considered the rival contentions, we are satisfied that the appellant are entitled for cum-duty benefit and accordingly, we hold in favour of the appellant on this ground. So far the penalties are concerned, we find that as the appellants have deposited the tax prior to issue of show cause notice along with interest, the penalties imposed are hance not sustainable. Accordingly, we set aside the penalties imposed under Section 77 and 78 of the Act. We remand to the adjudicating for the limited purpose of recalculating the tax on cum-duty basis and if any further amount is found to be payable then these appellants will be informed accordingly, which the learned counsel undertakes shall be paid forthwith. We also direct the learned Counsel, to appear before the authority with a copy of this order and calculation chart showing the admitted tax on cum-duty basis for expeditious disposal of calculation of tax.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
08/05/2017
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