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: 17/10/2017

To

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

Final Order No. ST/A/71250/2017-CU[DB] dated 28/09/2017

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/1523/2011	**Smt Seema Verma** Mausada, Moti Nagar Faizabad UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To
3Advocate(s) / Consultant(s):

Kartikeya Narain
c/o S.C.Kamra & co,Advocates
& Solicitors,21 b/1/17,tashkand
Marg,Civil
Lines,Allahabad,U.P.

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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/1523/2011-CU[DB]

(Arising out of Order-in-Appeal No. 72/ST/ALLD/2011 dated 14/06/2011 passed by Commissioner of Central Excise (Appeals), Allahabad)

Smt Seema Verma **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri Kartikeya Narain (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 28/09/2017
Date of Decision : 28/09/2017

FINAL ORDER NO:-71250/2017..........

Per: Anil Choudhary

The present appeal is directed against Order-in-Appeal No. 72/ST/ALLD/2011 dated 14/06/2011 passed by Commissioner of Central Excise (Appeals), Allahabad.

2. Brief facts of the case are that the appellant was engaged in providing Business Auxiliary Service to M/s Fashion Suitings (P) Ltd., Bhilwara (M/s FSI) under their scheme 'Right Concept Marketing', and admitted to have received commission amounting to Rs.13,32,302/- (during May, 2004 to 31/03/2007). But she failed to get registration

and pay service tax on the service under Business Auxiliary Service. The SCN issued on 14/05/2008 with proposed demand and recovery of Service Tax of Rs. 1,52,312/- along with appropriate interest and penalty.

3. Heard Mr. Kartikeya Narain, Advocate for appellant, fairly concedes that the services provided falls under the taxable category of Business Auxiliary Service as per the decision of this Tribunal in the case of Charanjeet Singh Khanuja Vs. C.S.T., Indore/Lucknow/Jaipur/Ludhiana reported in 2016 (41) S.T.R. 213 (Tri.-Delhi). However, he submits that the SCN was issued beyond the period of One Year from the relevant date. This can be demonstrated as under:-

1.	Period in Dispute	May, 2004 to March, 2007
2.	Due date of filing ST-3 return for the period October, 2006 to March, 2007	25/04/2007 (relevant date)
3.	Due date of issuing SCN (One year from the relevant date).	25/04/2008
4.	SCN was issued on	14/05/2008

He also submits that since there was no fraud, collusion or suppression of fact with intent to evade payment of Service

A.

Tax, penalty under Section 78 cannot be imposed on the appellant.

4. On the other hand, the Learned DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard the both sides and perused the records.

6. We find that the activity of appellant as associate of Right Concept Marketing (RCM), liable to levy of Service Tax was contentious issue, which was resolved by the Tribunal in the case of Charanjeet Singh Khanuja (Supra), holding that such activity should fall under the Business Auxiliary Service.

7. Considering the fact that there was ambiguity in interpretation of the statutory definition of Business Auxiliary Service, we are of the view that the demand for extended period of limitation cannot be sustained. Admittedly, there is no sustainable ground in this case like fraud, misstatement etc., on the part of the appellant for defrauding the Government Revenue. Since the period of dispute is from May, 2004 to March, 2007 and the SCN was issued on 14/05/2008, the same is clearly barred by limitation of time, having being issued beyond the normal period. Accordingly, the adjudged demand against the appellant cannot be sustained on the ground of limitation.

8. Therefore, after setting aside the impugned order, we allow the appeal in favour of the appellant. The appellant shall be entitled to consequential relief as per law.

(Dictated & Pronounced in Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
17/10/12
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