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: 03/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70237/2017-CU[DB] dated 02/03/2017

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/57368/2013, ST/MISC/55719/2013	ST/3060/2012	**State Bank Of India** Roorkee Road, Meerut Cantt. MEERUT U.P
		Name and Address of Respondent
2		*C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005*

Copy To

3Advocate(s) / Consultant(s):

HARBIR SINGH ADVOCATE
12 SHARK COLONY, OPP SAI PLAZA, SARDHARNA ROAD,
KANKARKHERA, MEERUT CANTT, UP-250001

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/MISC/57368/2013 & 55719/2013
Appeal No. ST/3060/2012-CU[DB]

Arising out of Order-in-Appeal No. 51-CE/MRT-I/2012 dated 14.05.2012 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I.

State Bank of India, Roorkee Road, Meerut Cantt., Meerut.
...APPELLANT

VERSUS

Commissioner of Central Excise, Meerut. ...RESPONDENT

APPEARANCE

Shri Harbir Singh, Advocate for the appellant.
Shri Pawan Kumar Singh (Supdt.) A.R. for the Department.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 21.12.2016

FINAL ORDER NO.- 70237/2017

Per Mr. Anil Choudhary :

Heard the parties.

2. The issue in this appeal is whether the show cause notice have been issued without alleging short payment/non-payment of Service Tax and/or is vague.

3. From a perusal of the show cause notice it appears that the same have been issued based on some intelligence gathered by DGCEI, Bangalore wherein they informed vide their letter dated 21.01.2009 that State Bank of India, Roorkee Road, Meerut Cant., Meerut is providing the service in relation to operation of the Bank accounts of Employees Provident Fund Organization (EPFO for short), which squarely fall within the taxable category of "Banking & Financial Services" and are leviable to Service Tax. It is further alleged that the services provided by the appellant in relation to operation and maintenance of accounts of EPFO, and they earned commission on the same. On scrutiny of records filed by State Bank of India it appears that they had not discharged the Service Tax liability on the aforesaid services and commission earned from EPFO and thus Service Tax has not been paid or short paid. Further, facts are that the State Bank of India had applied for registration under Service Tax provision on 28.09.2004 under Banking and other Financial Services which was granted to them on 29.09.2004. It is further alleged that State Bank of India has not paid Service Tax on commission received from EPFO alongwith other commission and exchange in the ST-3 returns filed by them. Further, alleging that State Bank of India have excluded the commission from EPFO, to arrive at the taxable value of commission earned under different heads. It is further alleged that on the receipt of information from DGCEI, Revenue had sent letter and in reply the State Bank of India informed that they are paying Service Tax as and when the amount of commission is received from EPFO. State Bank of India also promised to file the details in due course. It appeared to

Revenue that State Bank of India is delaying in giving the information. As per report of DGCEI, they have not paid Service Tax on commission earned from EPFO, and relying on the same show cause notice dated 24.12.2009 was issued, as it appears that State Bank of India have suppressed the facts and contravened the provisions of Section 68 of the Act readwith Rule 6 of Service Tax Rules, 1994 with intention to evade payment of Service Tax.

4. The show cause notice was adjudicated on contest vide Order-in-Original dated 15.02.2011 wherein out of proposed amount of Rs. 15,11,539/- reduced amount Rs. 10,64,258/- was confirmed as Service Tax short paid alongwith interest and further penalty was imposed under Sections 76 & 78 of the Finance Act, 1994. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who vide impugned order was pleased to confirmed the demand and also confirmed the penalty under Section 78, but was pleased to set aside penalty under Section 76 of the Finance Act.

5. Having considered the rival contentions and on perusal of records we find that the show cause notice is defective as it do not have or annexed the contents of letter dated 21.01.2009 issued by DGCEI to the office of Commissioner, Customs and Central Excise, Meerut-I. Non supply of copy of information received by DGCEI from EPFO or any other source, render the show cause notice vague. Further, it appears that the show cause notice have been issued mechanically, without application of mind. There is no allegation in the

show cause notice that the appellant had filed wrong returns and returns filed have been found to be *prima-facie* wrong, without reference to the books of account maintained by the State Bank of India. Thus, we find that the show cause notice is not tenable as the same is based on some incomplete information, which is not sustainable, leaving the assessee in dark as to what is the gist of accusation. Accordingly, we set aside the impugned order and allow this appeal. The appellant shall be entitled for consequential benefit, if any, as per law.

(Order was dictated in the open Court)

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

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

Patel/-

प्रमाणित प्रति / Certified True Copy
07/03/2017
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