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: 19/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71095/2017-SM[BR] dated 15/09/2017

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/239/2011 | **Yogesh Courier Service**<br>Warsi Complex,lakan<br>Chauraha,ajaypal Road<br>KANNAUJ<br>UP |
| | | Name and Address of Respondent |
| 2 | | C.C.E. & S.T.-Lucknow<br>7-A...ASHOK MARG,<br>LUCKNOW,<br>UTTAR PRADESH-226001 |

Copy To

3 Advocate(s) / Consultant(s):

**Kartikeya Narain (Amicus Curiae).,**
**21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.**

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, 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. II**

**APPEAL No.ST/239/2011-ST[SM]**

(Arising out of Order-in-Appeal No.396-ST/LKO/2010 dated 23/11/2010 passed by Commissioner of Customs & Central Excise, Lucknow)

**M/s Yogesh Courier Service** **Appellant**

Vs.

**Commissioner of Central Excise & S.T., Lucknow** **Respondent**

Appearance:

Shri Kartikeai Narain, Advocate for Appellant
Shri P. K. Dubey, Supdt (AR), for Respondent

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Date of Hearing : 15/09/2017
Date of Decision : 15/09/2017

FINAL ORDER NO:-71035/2017.........

**Per: Ashok Jindal**

The appellant is in appeal against the impugned order.

2. The brief facts of the case are that the appellant provided courier service. During the period from April, 2005 to September, 2008 they were under the bonafide belief that they were covered by Small Scale Exemption under Notification 6/2005-ST dated 01.03.2005 and were given to understand that they were covered by the said notification and therefore they neither collected service tax from their customers nor paid the same to the Exchequer and did not file any returns. Subsequently they were issued with show cause notice. The show cause notice was adjudicated wherein

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the Original Authority confirmed the demand and imposed penalty. Aggrieved from the said order, the appellant is before me.

3. The learned Counsel for the appellant submitted that they were given to understand that Small Scale Exemption was applicable to them that is why they did not charge Service Tax from the clients and did not file return or credited Service tax to Exchequer. They have prayed for waiver of penalty and late fee.

4. Heard learned A.R. who has supported the impugned Order.

5. Having considered the rival contentions, I find that the penalty and fee survived through impugned Order-in-Appeal needs to be considered under the provisions of Section 80 of Finance Act, 1994, as they were applicable during the relevant period before repeal of the same through Finance Act, 2015. Provisions of Section 80 provided that if there was a reasonable cause for failure, penalty imposable under Section 76 and 77 could be exempted. Further, the appellant was given to understand that they were covered by Small Scale Exemption. Therefore, there was a reasonable cause for appellant not to pay Service Tax and there was no deliberate attempt on their part to evade payment of Service Tax. The fact also indicates that they did not collect Service Tax from

Ashok Jindal

their customers. Therefore, I am of the opinion that this is a fit case for invoking Section 80 of the Finance Act, 1994. Under Section 80 of the Finance Act, 1994, I further modify the orders of Commissioner (Appeals) impugned herein by waiving penalty and late fee in above terms.

6. In result, the Appeal is allowed.

(Dictated in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

akp

Certified True Copy

29/09/12

Asstt. Registrar

(C.E.S.T.A.T.)

88, M. G. MARG, ALLAHABAD-211001