FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 30/11/2017

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

Final Order No. A/71704-71705/2017-SM[BR] dated 22/11/2017

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/331/2010	CCE, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
2	ST/762/2010	**MEN POWER SECURITY AGENCY** Kham Garden, Nainital Road, Haldwani, Distt- Nainital, Uttrakhand.
		Name and Address of Respondent
3		MEN POWER SECURITY AGENCIES, AGENCIES, KHAM GARDEN, NAINITAL ROAD, HALDWANI, DISTT. NAINITAL(UTTRAKHAND)
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**Lasa Consultancy (P) Ltd.
C-15, 16, HARTHALA
INDUSTRIAL
AREA, KANTH ROAD,
MORADABAD,
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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos. ST/331 & 762/2010-ST[SM]

(Arising out of Order-in-Appeal No. 411-ST/MRT-II/09 dated 23/12/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

Commissioner of Central Excise, Meerut-II &

M/s Men Power Security Agency, **Appellants**

Vs.

M/s Men Power Security Agency &

Commissioner of Central Excise-Meerut-II, **Respondents**

Appearance:

Shri Mohammad Altaf, Assistant Commissioner (AR) for Revenue

Absent on call for Assessee

CORAM:

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

Date of Hearing : 22/11/2017

Date of Decision : 22/11/2017

FINAL ORDER NOs.-71704-71705/2017

Per: Archana Wadhwa

On matter being called, neither anybody appeared on behalf of the appellant nor is there any adjournment request in spite of the notice having been sent to them well in advance. Accordingly, I have heard the learned A.R. appearing for the Revenue and have gone through the impugned orders.

2. It is seen that the appellant as well as the Revenue has challenged the said order of Commissioner (Appeals) vide which he has upheld the confirmation of demand but has extended the benefit of cum-duty to the assessee. The Revenue being aggrieved by the said part of the order, has

filed the present appeal. The assessee is aggrieved with the imposition of penalties in terms of Sections 77 and 78 of the Finance Act, 1994 and have challenged the same in the present appeal.

3. As per facts on record, the appellant is a partnership firm of Ex-Service men engaged in providing the security services. They were duly registered with the Service Tax Department and were discharging their Service Tax liability on the value of the service provided by them, which did not include the salaries of the security guards, etc.,

4. It was found, on scrutiny of their records, that the salaries of the security guards is also to be a part of the value of the service, for which proceedings were initiated against them by way of issuance of a show cause notice, invoking the extended period of limitation. It is also seen that the appellant before issuance of show cause notice, deposited duty alongwith interest and only challenged penalty on the ground that they were under bonafide belief that only the commission received is to form part of the value of the service. As such, they prayed invoking of provisions of Section 86 of the Finance Act.

5. It is seen that the Additional Commissioner vide his impugned order confirmed the demand and also imposed penalty of Rs. 200 per day or at the rate of 2% of the Service

Tax per month, subject to the maximum amount of Rs. 16.51.492/-, in terms of the Provision of Section 76 of the Finance Act, 1994. In addition, penalty of identical amount was imposed under Section 70 of the Act.

6. Being aggrieved with the said order, appellant filed an appeal before Commissioner (Appeals), who upheld the imposition of penalties but granted relief to the assessee by treating the entire consideration as cum duty.

7. Hence present two appeals, one by the appellant and other by the Revenue.

8. It is seen that the issue of cum duty price stands settled by Catena of judgments of the Higher Courts and is no longer res-integra. No infirmity can be found in the order of Commissioner (Appeals), in this regard. Accordingly, Revenue's appeal is rejected.

9. As regards the assessee's appeals, it is seen that only challenge is to imposition of penalties in terms of Sections 77 and 78 of the Finance Act, 1994. During the course of adjudication, they had taken a categorical stand that from various source like Television and newspaper as also repeated advertisements in the newspaper and television, by Directorate of Audio Visual Publicity Wing of the Government, they entertained a view that security persons' salaries would not form part of the value of the service tax. In the absence of

any malafide on their part, the invocation of penal provisions is not justified.

10. I note that the issue as to whether the value of the service to be provided by security agents services, would include the value of the salary of the security personnel or not was the subject matter of litigation before various higher forums. As such, it can be concluded that the issue was not free from the doubt, thus leading to a bonafide belief on the part of the appellant that no service tax is liable to be paid on the same. As soon as the Revenue pointed out the said fact to the appellant, they deposited the service tax alongwith interest

In such a scenario invocation of penal provision against the assessee, cannot be appreciated. Accordingly, the penalty imposed upon them is set aside and appeal is allowed to that extent.

Both the appeals one filed by the appellant or other by the Revenue are disposed in above manner.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ankit

प्रमाणित प्रति/Certified True Copy
03/01/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
... मार्ग, इलाहाबाद-211001
... MARG, ALLAHABAD-211001