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: 22/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70572/2018-SM[BR]** dated **14/03/2018**

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/70071/2017	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Meroform (india) Pvt Ltd A-37,sector-80,, NOIDA ,UP

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

M.B. Mathur (Advocate)
D-60, GROUND FLOOR,
SECTOR-2, NOIDA DISTRICT
GAUTAM BUDDH NAGAR UP

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/70071/2017-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/235/2016-17 dated 23/11/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

Commissioner of Service Tax, Noida **Appellant**

Vs.

M/s Meroform (India) Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR) for Appellant

Shri M. B. Mathur, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 14/03/2018

FINAL ORDER NO. 70572/2018

Per: Anil Choudhary

The issue in this appeal is, whether the appellant has provided service under the category of "Supply of Tangible Goods".

2. The admitted facts, as per the Show Cause Notice, are that the respondent-assessee is registered with the Service Tax Department and providing various services like – Erection, Commissioning & Installation, Business & Exhibition Service, GTA & Works Contract, etc. In course of audit conducted by the Officers of the Central Excise for the period from April, 2011 to December, 2012 and as per report No. 255/2012-13. It was observed that from the Income Ledger of the respondent during the period 2010-11 to

2012-13 they have booked income under the head "Hiring of Office Furniture" which appeared to be leviable to Service Tax. On enquiry, the respondent stated that they hire furniture on rent to visitors in business exhibitions as per the requirement of the organizers and exhibitors and they are treating the same as deemed sale and paying VAT on the same. It appeared to Revenue that the transaction is chargeable to Service Tax under the category of "Supply of Tangible Goods". It was further alleged in the Show Cause Notice that respondent was asked to provide a copy of written contract in this regard, but they failed to provide the same and has stated that they have not entered into any written contract and further respondent also failed to produce any document evidencing the right of effective control and possession have been passed on. Further, though the goods are transferred for use, the respondent collects back the furniture after the period of user. Hence effective control is transferred to the respondent. Accordingly, it appeared to Revenue that there is no sale of goods in terms of the Sale of Goods Act, 1930 and further State levy of VAT for right to use as per the constitutional provisions, nowhere affects, simultaneous levy of Service Tax under the category of "Supply of Tangible Goods". Accordingly, invoking the extended period vide Show Cause Notice dated 18/02/2015, proposing demand of Service Tax of Rs. 22,48,253/- for the period January, 2013 to September, 2014. The Show Cause Notice was adjudicated by the Additional Commissioner, was pleased to hold that the respondent has provided service under the category of "Supply of Tangible Goods" and accordingly, confirmed the demand with interest and equal amount of penalty under Section 76 of the Finance Act, 1994 and also penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994. Being aggrieved by the said order, the appellant preferred appeal before ld. Commissioner (Appeals), who was pleased to allow the appeal by setting aside the impugned Order-in-Original.

3. Being aggrieved the Revenue is in appeal before this Tribunal on the ground that the Commissioner (Appeals) have erred in setting aside the order without going into the facts or giving any cogent reason. That "Here, though the title in the goods was not transferred by the appellant, he had transferred the right to use such goods to his customers". However, in terms of the Board instruction dated 29/02/2008, it is clear that whether a transaction involves transfer of possession and effective control is a question of fact and issue decided based on the terms of the contract and other material facts.

4. Heard both the parties and considered the rival submissions.

5. Having considered the rival contentions and on perusal of the facts on record, I find that it is an admitted fact in the Show Cause Notice, that the respondent-assessee has paid VAT on the disputed transaction. Further, I find that the

Show Cause Notice is presumptive in nature, as there is no finding and/or allegation that effective control of the goods/furniture was not given by the respondent to its customers. Further, I find that the definition of Supply of Tangible Goods as given in Section 65 (105) (zzzzj) of the Finance Act, 1994, provides that such services are for use, without transferring right of possession and effective control of such machinery, equipment and appliances. There is no allegation nor any finding by the courts below that the right of possession and/or effective control of the furniture/equipment was not given by the respondent to its customers. Thus, the essential facts for levy of Service Tax under the category of "Supply of Tangible Goods" are wanting and accordingly, I hold that the Show Cause Notice is vague and not maintainable. I, further, find no impropriety in the order of the learned Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is dismissed and the order of the Commissioner (Appeals) is upheld. The respondent-assessee shall be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

Ansari

Certified True Copy

27/03/18

Asstt. Registrar

ALLAHABAD-211001