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: 06/02/2018

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

Final Order No. **A/70289/2018-SM[BR]** dated **12/01/2018**

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/70543/2016	**Kalyani Buildwell Pvt Ltd** Kalyani Point, Nh-2, Bye Pass Road AGRA U.P. 282005
		Name and Address of Respondent
2		C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002

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

Shambhu Chopra
HIGH COURT CHAMBER
NO 147, New Building
Allahabad

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/70543/2016-CU[SM]

(Arising out of Order-in-Appeal No. 55-ST/APPL-AGRA/LKO/2016 dated 14/01/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Kalyani Buildwell Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Customs, C.E. & S.T., Lucknow	**Respondent**

Appearance:

Shri Shambhu Chopra, Advocate	for Appellant
Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR),	for Respondent

CORAM:

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

Date of Hearing	:	12/01/2018
Date of Decision	:	12/01/2018

FINAL ORDER NO.-70289/2018........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 55-ST/APPL-AGRA/LKO/2016 dated 14/01/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were issued with a show cause notice on two grounds, one was short paid service tax on 'Renting of Immovable Property Services' and another was short paid service tax of

Rs.6,40,460/- on construction of 'Residential Complex Service'. The proceedings culminated into the passing of impugned Order-in-Appeal. In Para-11 of Order-in-Appeal Learned Commissioner (Appeals) has held that service tax liability in respect of 'Renting of Immovable Property Service' for the period covered by said show cause notice dated 16/04/2013 was Rs.25,54,666/- and the same was deposited by the appellant before the issuance of show cause notice. The Learned Commissioner (Appeals) has further recorded that request of appellant for refund of Rs.11,62,889/- being excess amount of tax paid by them cannot be considered at that stage. Further, in respect of demand of service tax for 'Residential Complex Services' amounting to Rs.6,40,460/-, Learned Commissioner (Appeals) has recorded that the short paid service tax was paid by the appellant before issue of Order-in-Original. However, he has ordered the appellant to pay penalty amount, 25% of the entire amount of Rs.31,95,126/- (25,54,666+6,04,460) under Section 78 of the Finance Act, 1944. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the Learned Counsel for appellant, he has submitted that interest on delayed payment in respect of 'Renting of Immovable Property Service' was paid before issue of show cause notice. Therefore, as ~~proceeded~~ provided under Sub-section (3) of Section 73 of Finance Act, 1994 show cause

notice was not to be issued in respect of any short levy in respect of 'Renting of Immovable Property Service'. Further, he has submitted that the Learned Commissioner (Appeals) has held that the appellant had excess paid Rs.11,62,899/-. Further, he has submitted that there was no suppression etc. Therefore, penalty of 25% under Section 78 of the Act was not imposable.

4. Learned A.R. for Revenue has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, it is very clear that in so far as 'Renting of Immovable Property' is concerned there was no need of issuance of show cause notice. Therefore, question of imposition of penalty on service tax of Rs.25,54,666/- does not arise. I, therefore, set aside the order in so far as it relates to imposition of 25% penalty under Section 78 on alleged short payment of service tax of Rs.25,54,666/- on 'Renting of Immovable Property'. Further, in respect of short payment of Rs.6,40,460/-, I remand the matter back to the Original Authority with a direction to examine whether excess paid amount of Rs.11,62,889/- was paid before the due date of payment of service tax amounting to Rs.6,40,460/- and if yes then in that event there was no need for issuance of show cause notice, even for demand of short payment of service tax on 'Construction of Residential Complex Service' under any

other circumstances, original authority shall decide the matter in respect of service tax on Construction of Residential Complex Service in accordance with law. Therefore, by setting aside the impugned Order-in-Appeal the matter is remanded to original authority, as ordered herein above.

6. Accordingly, Appeal is allowed by way of remand.

(Dictated & Pronounced in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

akp

प्रमाणित प्रति/Certified True Copy
27/02/18
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