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: 15/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70559/2018-SM[BR] dated 12/03/2018

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/70556/2016	**Ram Nivas Singh Contractor** Kote Bazar, Payagpur, BAHRAICH U.P.
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

DUSHYANT KUMAR,
(CONSULTANT)
19/849 INDIRA NAGAR
LUCKNOW 226016

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/70556/2016-ST[SM]

(Arising out of Order-in-Appeal No. 136-ST/APPL-LKO/LKO/2016 dated 12/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Ram Nivas Singh Contractor **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad **Respondent**

Appearance:
Shri Dushyant Kumar, Consultant, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

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

Date of Hearing & Date of Decision : 12/03/2018

FINAL ORDER NO. 70559/2018

Per: Anil Choudhary

The issue in this appeal is, whether the Show Cause Notice was validly served on the appellant-assessee or not.

2. The ld. Counsel for the appellant have taken the ground that the impugned order, including the Order-in-Original, is wholly without jurisdiction in absence of service of Show Cause Notice on the appellant. He, further, points out that the Order-in-Original is silent as to the manner of service of the Show Cause Notice, which is an ex-parte order. The appellant had raised the issue of Show Cause Notice before the Commissioner (Appeals)

who was pleased to dismiss the ground observing that under Circular No. 275/34/2006-CX. 8A, dated 18/02/2010 the board has clarified that Commissioner (Appeals) continues to exercise the power of Adjudicating Authority in the matter of assessment. Further observing that the appellant have not disputed the adjudication order on merits, the Appellate Authority modifying the demand by reducing it, confirmed the demand alongwith penalty under Section 78 of the Finance Act, 1994.

3. Learned A. R. for Revenue have supported the impugned order. In order to ascertain the valid service of Show Cause Notice this Tribunal had on the earlier occasion on 20/12/2007, directed Revenue to produce the copy of the assessment record and/or the copy of evidence of service of Show Cause Notice.

4. The assessment record has been produced before this Tribunal in the course of hearing today. I find that the draft of Show Cause Notice was prepared by the Assistant Commissioner and forwarded to Joint Commissioner on 25/09/2012, wherein it is mentioned that the Show Cause Notice is required to be served on or before 24/10/2012. Thereafter, the Show Cause Notice has been issued on 09/10/2012 under memo No. VI (ST)

Dem. (12) Adj. – 181/2012 dated 09/10/2012, wherein the Inspector - Adjudication has forwarded the Show Cause Notice to the Assistant Commissioner - Central Excise & Service Tax, Faizabad, for service. Further, the Assistant Commissioner, Faizabad has replied to the Superintendent – Adjudication, Allahabad by letter dated 05/11/2012, informing that the assessee – M/s Ram Nivas Singh Contractor, was not available at his address and could not be contacted on telephone and accordingly in the presence of two independent witnesses the notice has been served by affixation. The enclosed affixation report is dated 17/10/2012.

5. I find from the facts on record that it appears to be a colourable exercise of power as regards service of the Show Cause Notice by affixation. There is no attempt to serve the notice in the normal process by registered post or speed post. Further the service report prepared by the Superintendent, Faizabad also does not contain any number of attempts undertaken to serve the notice directly to the assessee. Straight away upon receiving the notice it has been served by affixture. Thus, it is writ large on the face of the record that the Show Cause Notice has not been served upon the appellant-assessee and only so-called record of service of Show Cause Notice

Acn

has been prepared, which is against the provisions of law and the rules. In this view of the matter, I hold that there is no valid service of Show Cause Notice. Accordingly, the impugned order cannot be sustained and the same is set aside. The service of a valid Show Cause Notice is a condition precedent for assuming jurisdiction to pass an adjudication order. Accordingly, the appeal is allowed with consequential benefits to the appellant, in accordance with law.

(Dictated in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
21/03/18
Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001