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: 09/04/2018

To

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

Final Order No. A/70733/2018-SM[BR] dated 09/04/2018

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/70796/2016	**Vishwanath Mishra** Rudra Nagar (pahari),rohania VARANASI UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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

Ms. Stuti Saggi, (Advocate) (ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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/70796/2016-ST[SM]

(Arising out of Order-in-Appeal No. 379-ST/APPL-ALLD/LKO/2016 dated 13/05/2016 passed by Commissioner of Central Excise, Varanasi)

M/s Vishwanath Mishra **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Ms Stuti Saggi, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Assistant Commissioner (AR),for Respondent

CORAM:

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

Date of Hearing : 18/12/2017
Date of Decision : 18/12/2017

FINAL ORDER NO-70733/2018

Per: Anil Choudhary

The present appeal is directed by the appellant against Order-in-Appeal No. 379-ST/APPL-ALLD/LKO/2016 dated 13/05/2016 passed by Commissioner of Central Excise, Varanasi.

2. The brief facts of the case are that the appellant was providing vehicle to M/s UPSRTC. Revenue collected information from M/s UPSRTC about the amount paid to the appellant for the period from 2005-06 to 2009-10. It appeared to revenue that the amount so received by the appellant was

consideration towards providing 'Rent-a-cab Operator Service' and was chargeable to service tax. Therefore, a demand cum-show cause notice dated 01.04.2010 was issued demanding service tax of Rs.5,14,524/- for the said period, on consideration of Rs.45,34,576/- received by the appellant. The appellant submitted before the original authority that appellant was entitled for abatement of 60% assessable value under Notification No.9/2004 dated 09.07.2004 and 1/2006-ST dated 01.03.2006 and that under Notification No.6/2005-ST dated 01.03.2005 the abated value is eligible for small scale exemption and therefore, appellant was not required to pay any service tax. The issue was adjudicated through Order-in-Original dated 02.04.2014 wherein the original authority dropped the proceedings against the appellant. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) has examined Explanation "B" of Notification No.6/2005-ST dated 01.03.2005 and held that while arriving at the aggregate value of taxable service under the said explanation such sum is to be excluded which is exempted from the whole of service tax and that in the instant case under the said Notification No.9/2004 and 1/2006-ST abetment of 60% is allowed which does not amount to exemption from whole of the service tax and therefore, the whole of the consideration received by the appellant needs to be taken into consideration while arriving at aggregate value of services provided. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the parties and perused the said Explanation "B".

4. Having considered the rival contention and on perusal of Explanation "B" to the said Notification No.6/2005-ST dated 01.03.2005, I find that the said explanation authorizes exclusion of consideration received towards providing service which are exempt from whole of service tax leviable thereon. On perusal of the said Notifications No.9/2004 and No.1/2006-ST, I find that 60% of the consideration received is exempted from the whole of the service tax leviable thereon. Therefore, I find that for the purpose of calculation of aggregate value as per said explanation "B", 60% of the consideration received by the appellant for which exemption was admissible, does not need to be taken into consideration. We also find from the record that after excluding 60% consideration, the aggregate value of clearance for the years 2007-08, 2008-09 and 2009-10 in the present case is within the permissible limit for the exemption under the said Notification No.6/2005-ST dated 01.03.2005, which exempts taxable service from whole of service tax leviable under Section 66 of the Finance Act, 1994. I, therefore, hold that the impugned Order-in-Appeal is not sustainable.

5. Therefore, I set aside the impugned Order-in-Appeal and allow the appeal filed by the appellant.

(Dictated in Court)

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

akp

प्रमाणित प्रतिलिपि/Certified True Copy
11/09/18
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-2110..
38, M. G. MARG,ALLAHABAD-2110..