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: 05/12/2017

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

Final Order No. A/71836-71837/2017-SM[BR] dated 14/11/2017

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/52761/2014	**Man Singh Mall** G.t. Road,mohan Nagar GHAZIABAD UP
2	ST/52762/2014	**Mansigh Mall** (a Unit Of Indo Continental Hotel &resports Ltd)gt Road, Mohan Nagar GHAZIABAD UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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/52761-52762/2014-ST[SM]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-234-13-14 dated 18/02/2014 (in Appeal No. ST/52761/2014) and Order-in-Appeal No. GZB-EXCUS-000-APP-233-13-14 dated 07/02/2014 (in Appeal No. ST/52762/2014) passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Ghaziabad)

M/s Man Singh Mall **Appellant(s)**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent(s)**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant(s)
Shri Pawan Kumar Singh (Supdt.) AR for Respondent(s)

CORAM:

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

Date of Hearing : 14/11/2017
Date of Pronouncement : 21/12/2017

FINAL ORDER NOs. 71836-71837/2017

Per: Archana Wadhwa

Both the appeals are being disposed of by a common order as the issue involved is identical.

2. As per the facts on record the appellant is owner of a Mall and is registered with the Service Tax Department in respect of various services being provided by him. As a result of audit, it was found that the appellant was availing inadmissible Modvat Credit on various counts to which the

appellant agreed and debited the same. Further, it was seen that in respect of renting of immovable property, in cases where the tenants were not paying service tax, the same was not being deposited by him. However, on being pointed out by the audit, the appellant deposited the short paid service tax.

3. In the above scenario the proceedings were initiated against the appellant for confirmation of interest in respect of short paid service tax as also in respect of reversal of credit. The said show cause notice was raised by invoking the longer period of limitation. The notice also proposed imposition of penalties.

4. The appellant contested the proposals on the issue of time bar as also on the issue of bonafide and sought invocation of the provisions of Section 80. The Adjudicating Authority, however, did not find favour with the appellant's contentions and confirmed the interest alongwith imposition of penalties.

5. Learned advocate appearing for the appellant drew my attention to the Hon'ble Delhi High Court decision in the case of Hindustan Insecticides Ltd. vs. Commissioner reported at 2013 (297) ELT 332 (Del.), laying down that the limitation applies to the demand of interest also. Inasmuch as the notice stands issued by invoking the longer period of

limitation, the demand for interest is barred by limitation. Accordingly the same is set aside.

In addition to the demand being barred by limitation, it is also seen that no interest would be leviable on the reversed credit amount, inasmuch as the same was lying unutilized in the assessee's Cenvat Account. The Hon'ble Karnataka High Court in the case of Commissioner vs. Bill Forge Pvt. Ltd. reported at 2012 (279) ELT 209 (Kar.) has held that if the wrong credit availed by an assessee is not utilized, interest liability would not arise. On this ground also, interest confirmation cannot be upheld.

6. As regards penalty, I find that the appellant was not depositing the service tax inasmuch as the same was not being given to him by the service recipient. In such scenario there could be a bonafide belief on the part of the appellant that inasmuch as service tax has not been received by him, he is under no legal obligation to deposit the same.

In any case I find that the short paid service tax was in respect of "**Renting of Immovable Property**". The said service was under litigation before various High Courts and was ultimately decided by the Hon'ble Delhi High Court in favour of the Revenue. Section 80 Finance Bill, 2012 is to the effect that if an assessee deposits the entire tax within the period of six months from the date of receipt of assent of the

President to the Finance Bill, 2012, the penalties would not be imposable. In the present case the entire deposits were made in the year 2010 itself. As such, no penalty is required to be imposed upon him.

7. In view of the above, the interest confirmation and penalty imposition is set aside and appeals are allowed to that extent.

(Pronounced in Court on......1/12/17.........)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ankit

प्रमाणित प्रतिलिपि/Certified True Copy
04/01/18
Asstt. Registrar
C.E.S.T.A.T.