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: 02/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71280/2017-CU[DB] dated 11/10/2017

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/CROSS/50667/2015, ST/Stay/53212/2014	ST/52852/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
			Name and Address of Respondent
2			Nisha Enterprises 11-27, Uprn Colony,,Anpara Bazar, Anpara,, SONEBHADRA, ,UP

Copy To

3 Advocate(s) / Consultant(s):

Om Prakash Shukla, Adv.
R/O S 81109-G, AMIRT VILA , BESIDE
INCOME TAX OFFICE, MOGBUL
ALAM ROAD,
VARANASI,
UTTAR PRADESH

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

CROSS Application No. ST/CROSS/50667/2015
With STAY Application No. ST/Stay/53212/2014
In APPEAL No. ST/52852/2014-CU[DB]

(Arising out of Order-in-Appeal No. 168 & 169/ST/ALLD/2013 dated 31/12/2013 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Allahabad)

Commissioner of Central Excise & Service Tax, Allahabad

Appellant

Vs.

M/s Nisha Enterprises **Respondent**

Appearance:

Shri Sandeep Kumar Singh (Dy. Commr.) for Appellant
Shri O.P. Shukla (Advocate) for Respondent

CORAM:

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

Date of Hearing : 11/10/2017
Date of Decision : 11/10/2017

FINAL ORDER NO.-71280/2017........

Per: Anil Choudhary

Revenue is in appeal against the impugned Order-in-Appeal, wherein the learned Commissioner (Appeals) have held that the respondent-assessee was engaged in maintenance and repair services provided to the principals. Service tax have been demanded on the gross value of service provided, which includes the material component also. It have been held that the appellant is entitled to deduction of the material component used in providing the service of maintenance and repair, more particularly taking notice of the fact that the appellant have also paid VAT/Sales Tax on the material component. However, the learned Commissioner (Appeals) although have observed that accordingly the tax liability needs to be re-determined and if any amount is found further payable, the same shall be paid and further the respondent-assessee shall also be liable to penal action as per quantum of service tax short paid. However, he neither determined the balance amount payable/refundable nor he have remanded to the Adjudicating Authority for the final determination of quantum.

2. Heard the parties.

3. Having considered the rival contentions, we approve the impugned Order-in-Appeal. So far it has held that the respondent-assessee is not liable to pay service tax on the material component. We allow this appeal of Revenue by way of remand for the limited purpose of re-determining the tax liability in terms of the order of the Commissioner (Appeals). If any amount is found further payable, the same shall be paid by the respondent-assessee and if any amount is found paid in excess the respondent-assessee shall be entitled to refund/adjustment of such tax. Under the facts and circumstances we hold that no penalty is excisable on the respondent-assessee.

4. With these observations and findings this appeal is allowed by way of remand in terms of the directions as contained herein.

5. The respondent-assessee is also directed to appear before the concerned Adjudicating Authority with a copy of the calculation of tax to facilitate the recalculation of tax liability if any. Cross Objection, Stay Application also stands disposed of.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

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

Anku

प्रमाणित प्रति/Certified True Copy
28/11/17
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