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: 07/03/2017

To

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

Final Order No. ST/A/70243/2017-CU[DB] dated 07/03/2017

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/53691/2014	**Singh Sales & Services** Opposite Baleshwar Temple Japlinganj BALLIA U.P. 277001
		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):

R K TEWARI ADVOCATE
C-1/15, SECTOR-36, NOIDA
UP

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, 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 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : ST/53691/2014-CU[DB]

Arising out of OIO No.(ST-21/2010) of 2010 dated 04.01.2011 passed by Commissioner, Central Excise & Service Tax, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Singh Sales and Services ...APPELLANT

VERSUS

C.C. & C.E. & S.T., Allahabad ...RESPONDENT

APPEARANCE

Shri R.K. Tiwari, Advocate for the appellant
Shri Sanjay Hasija, Supdt, (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 10. 10. 2016

Final ORDER NO.- 70243/2017

Per Mr. Anil Choudhary :

The appellant Singh Sales and Service is proprietorship concern of late Sanjay Kumar Singh through his legal heir Smt. Sonia Singh. The appeal is preferred against Order-in-Appeal dated 09/11/2011 passed ex parte, dismissing the appeal.

2. The brief facts are that late Sanjay Kumar Singh had entered into contract with BSNL for repair and maintenance of engine alternator sets. The main terms of the contract was that the appellant will also supply the spare parts and the same shall be billed separately in the invoices. The appellant had taken registration under the provisions of Service Tax and had also filed the returns for the period October, 2006 to March, 2007-08. SCN dated 28/01/2010 was issued as it appear to Revenue that the appellant have not taken registration in due time nor submitted the returns in time and further have not deposited the service tax on the due dates. As per information obtained from BSNL for the period 2007 to 2008, it was revealed that appellant have provided taxable service under the head Management, Maintenance or Repair Service and received a gross amount of Rs.1,35,95,894/- and have deposited the total service tax Rs.6,02,987/- including education cess and SHES against total service tax due, as per Revenue amounting to Rs.16,32,410/- including cess as per Annexure-B to the SCN. Accordingly, it appeared that the appellant have not disclosed their proper affairs to the Revenue and have suppressed information and accordingly proposed to recover the

service tax amount of Rs.16,32,410/- with further proposal to appropriate the amount already paid Rs.6,02,987/- and further penalty was proposed under Sections 76, 77 and 78 of the Act. The SCN was decided ex-parte as the appellant had not filed any reply and/or representation nor had appeared for personal hearing confirming the proposed demand alongwith appropriation as proposed. Further, penalty of Rs.5000/- was imposed under Section 77 for non-filing of the ST-3 returns and equal amount of penalty Rs.16,32,410/- was imposed under Section 78 of the Act. Being aggrieved the appellant had preferred appeal before learned Commissioner (Appeals) on various grounds including that deduction for cost of materials supplied, which is included in the gross amount have not been given, resulted into wrong demand. But vide ex-parte order dated 9/11/2011 the appeal was rejected confirming the Order-in-Original.

3. Being aggrieved the appellant is before this Tribunal. The learned counsel for the appellant Shri RK Tiwari, Advocate have pointed out from the terms of contract that the appellant was required to separately bill the spare parts supplied and/or used in the repair and maintenance. He has further shown and also filed the copy of bills raised on the service receiver wherein the materials have been billed separately and the labour charges have been billed separately. Further, sales tax have been levied as applicable on the materials so supplied. Accordingly, he prays for allowing the appeal by way of remand for recalculation of the tax payable more particularly under the provisions of Notification No. 12 of 2003 dated 01/07/2003. Further,

on the issue of penalty he states that there is no case of any deliberate default as the sole proprietor was ailing during that time and was constantly being hospitalised and/or under bed rest which resulted in non-compliance before the courts below. He also led evidence in support of the ailment of the proprietor, who finally died on 4/2/2014.

4. The learned AR for Revenue relies on the impugned order.

5. Having considered the rival submissions and evidences on record, we find that the appellant is entitled to deduction of the material component from the gross amount. Before this Tribunal, the appellant have also filed a detailed calculation chart for the disputed period, according to which the service tax payable after making deduction for material component comes to Rs.5,45,744/-. The learned counsel also urges that upon reducing the material component the turnover for the financial year remains Rs.7,34,425/- and for this year for the first time the turnover is exceeding four lakhs, they will be entitled to the threshold exemption. Accordingly, we allow the benefit of threshold exemption for the financial year 2005-06 as allowable under Notification No. 6 of 2005-ST. Under the facts and circumstances, as the appellant had paid the taxes and it appears have paid rather more amount then the amount actually payable as per the calculation produced before this Tribunal, which is categorical fact on record. Accordingly, we set aside the penalty under Section 78 of the Act. However we retain the penalty under Section 77 for Rs. 5000/-. Accordingly, we allow this appeal by way of remand to the Adjudicating Authority for the limited purpose of recalculating the tax

payable, after allowing the threshold exemption and the set off for material component, as hereinabove indicated.

6. The appeal is allowed in part by way of remand to the Adjudicating Authority.

(Pronounced in the open Court)

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

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

Patel/-

प्रमाणित प्रति / Certified True Copy
14/03/17
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