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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70181-70182/2017-CU[DB] dated 20/02/2017

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/55934/2013	**Prithvee Propmart Pvt Ltd** S-2,plot No-52,savitri Market,sector-18 NOIDA U.P
2	ST/56308/2013	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C 56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307

	Name and Address of Respondent
3	Prithvee Propmart Pvt Ltd Rs-2, Plot No 52, Savitri Market,,Sector-18,, NOIDA, ,UP
4	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Abhinav Kalra, C.A
G-15,SECTOR-3,
NOIDA,
UTTAR PRADESH
201301

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, 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,Panjagutta 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 Guard File

Asstt. Registrar

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

Appeal No.ST/55934 & 56308/2013-CU[DB]

Arising out of Order-in-Original No.41/Commissioner/Noida/2012-13 dated 16.11.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida.

M/s Prithvee Propmart Pvt. Ltd. (in Appeal No.55934/2013)
Commissioner of Customs, Central Excise & S. T., Noida. (in Appeal No.56308/2013)
.. APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & S. Tax, Noida. (in Appeal No.55934/2013)

M/s Prithvee Propmart Pvt. Ltd. (in Appeal No.56308/2013)

...RESPONDENT (S)

APPEARANCE

Shri Abhinav Kalra, Advocate for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 14.03.2017

FINAL ORDER NO. 70181-70182/2017

Per Mr. Anil Choudhary :

These cross appeals arise from Order-in-Original dated 16.11.2012, wherein Service Tax have been demanded for Rs.1,65,39,989/- being service tax short paid and/or not paid alongwith interest and further composite penalty of Rs.1,65,39,989/- have been imposed under Section 76,77 & 78 of the Finance Act. Being aggrieved, the assessee is in appeal against the quantum of demand as well as penalty and the Revenue is in appeal against imposition of penalty urging that separate penalty under Sections the three should have been imposed.

2. Vide show-cause-notice dated 24th November, 2012, it appeared to Revenue that the appellant have short paid Service Tax although they have shown the service tax payable in the returns but have not paid the tax payable as per the returns. It also appeared to Revenue that the appellant was registered in the category of 'construction service in respect of commercial or industrial buildings and civil structure', 'construction of residential complex' but actually the Service Tax was payable under the category 'Real Estate Agent Service'. The admitted facts are that the appellant have been engaged in sale/purchase of flats/plot of different builders and receiving commission on account of service provided by them to their clients. They were also collecting service tax from 2006-07 and have deposited the taxes regularly with the Revenue. There were some delay in deposit of the taxes and the same was deposited by the appellant along with interest from time to time. The period in dispute is from 2006-07 to September, 2011. It have been urged by the learned counsel for the appellant-assessee that there is no case of any non-admission or disclosure of demand. The demand by the Revenue is mainly for the reason of not giving proper Cenvat Credit, credit of challans already paid and/or paid during the adjudicational proceedings, after issue of show-cause-notice but before passing of the impugned order, and due to wrong calculation of tax payable, the details of which are as follows:-

S. No.	Grounds	Amount of Service Tax covered	Department

1	Benefit of Cenvat Credit denied for the period April 2011-September 2011	Rs.10,36,260	No finding given in O-I-O regarding this
2	Wrong Tax has been calculated in FY 2010-2011	Rs.6,96,779/-	No finding given in O-I-O regarding this
3	Wrong Tax has been calculated in FY 2011-2012	Rs.13,01,137/-	No finding given in O-I-O regarding this
4	Equal penalty imposed u/s 78 alleging suppression of facts.	Rs.41,34,998 (25% of Rs.1,65,39,989 deposited)	Equal composite penalty imposed u/s 76,77 & 77 Finding on pg 53 of O-I-O

2.1 As regards, the amount of Rs.10,36,260/- is concerned, it is explained that this regarding input credit not allowed for the period April, 2011 to September, 2011. From the copy of return for the same period, filed on 3rd July, 2012, we find that said amount have been properly claimed in the relevant column of the return. It is further informed by the learned counsel that the said claim have never been disputed by the Revenue. So far as, the second amount of Rs.6,96,779/- is concerned. The learned counsel have explained that while calculating the demand for the period 2010-11, as is evident from para 3 of the show-cause-notice, from the gross bills raised Rs.13,30,08,217/- instead of taking Rs.1,76,54,373/- as the sundry debtors as on 31.03.2011, the amount of sundry creditors was Rs.68,17,629/- was considered as debtors, leading to calculation of excess tax of Rs.6,96,779/-. For the period April to September, 2011, there was the change in the point of Service Tax liability with effect from 1st July, 2011, when the tax liability was to arise either on raising of the invoice on the providing the service, whichever was earlier. Prior to this date, Service Tax was payable on the basis of receipt of consideration for service. Accordingly, he has provided the calculation chart for the period April, 2011 to June, 2011 as per receipt basis, giving credit of sundary debtors Rs.57,61,004 as on 30th June, 2011, the service tax on the same Rs.5,17,133/-. Thus, from the service tax demand of Rs.1,65,39,989/-, these three demands totaling Rs.22,50,072 (10,36,260+6,96,779+5,17,133), reduced, the balance demand remains Rs.1,42,89,917/-. Further, the learned counsel has produced the list of challans wherein he has shown that from the taxes paid by way of challans and Cenvat Credit availed. They have paid a total tax of Rs.1,61,52,401 which is more than the tax liability of Rs.1,42,89,917 as discussed herein above. The learned counsel further pointed out that they also paid the amount of Rs.39,77,241/- (towards interest) thus the total amount paid is Rs.2,01,29,642/-. Accordingly, the learned counsel urges that there is actually no service tax short paid. It is only a case of service tax paid with some delay, and admittedly the appellant have paid the tax amount with interest. The learned counsel have urged that they have deposited 25% of penalty imposed after passing of the impugned order, within a period of 30 days. The learned counsel urges that under these facts and circumstances, the show-cause-notice is not tenable and accordingly, the impugned order is fit to be set aside with appropriate directions.

3. The learned AR for Revenue has relied on the impugned order and also pressed the grounds of appeal by the Revenue for imposition of separate penalties.

4. Having considered the rival contentions, we are satisfied that there is no case of short payment of tax payable and/or under importing of tax payable in the returns filed by the appellant-assessee. Accordingly, we set aside the impugned order. We also hold that no penalty is imposable under the provisions of Section 76, 77, 78 of the Act. Accordingly, penalty is also set aside. We remand the matter to the Adjudicating Authority only for the limited purpose of reconciliation of the taxes paid and the verification of amounts found to be admissible by this Tribunal (para 2 & 2.1 above) and for verification of the challans, and allowing credit, which was not allowed earlier. The adjudicating authority verify the challans and the calculations of the net tax payable, if any, and if any amount is found to be paid in excess, same shall be refunded to the assessee and/or adjustment allowed, at the option of the assessee. We also direct the assessee to appear before the authority within a period of 45 days from the date of receipt of copy of this order and seek opportunity of hearing. Thus, the appeal of assessee is allowed with aforementioned directions and the appeal filed by Revenue is dismissed.

(Dictated and Pronounced in the open Court)

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

Mishra

प्रमाणित प्रति / Certified True Copy
22/02/17
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