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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 02/03/2017

To

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

Final Order No. ST/A/70229/2017-CU[DB] dated 28/02/2017

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/Stay/70001/2015	ST/70004/2015	**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		Trimurti Build Tech Private Limited A.d. Crossing,bank Road,, GORAKHPUR,UP

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

KAPIL VAISH
2nd Floor, Part-a Krishna Janki Palace, 35-c, Rampur Garden, Civil Lines, Bareilly, Up
BAREILLY

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

ST/Stay.70001/2015
Appeal No. ST/70004/2015-[DB]

Arising out of Order-in-Appeal No. 70/ST/ALLD/2014 dated 17.04.2015 passed by Commissioner (Appeals), Central Excise & Service Tax, Allahabad.

Commissioner of Central Excise & Service Tax, Allahabad.
...APPELLANT

VERSUS

M/s. Trimurti Build Tech Private Ltd. ...RESPONDENT

APPEARANCE

Shri Pawan Kumar Singh (Supdt.) A.R. for the Department.
Shri Kapil Vaish, C.A. for the assessee-respondent.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 02. 06. 2016
FINAL ORDER NO. 70999/2017

CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The brief facts are that the respondent-assessee was having Service Tax registration under the category Renting of Immovable Property Service and received payments during the period 2007-08, 2008-09 & 2009-10 respectively. The appellant had paid the admitted taxes and deposited the returns and tax. In the course of audit for the period April, 2007 to March, 2010 and on scrutiny and or comparison of the receipt figures as per profit and loss account and ledgers with those of the Service Tax Returns, it appeared to Revenue that the assessee-respondent had paid Service Tax short amounting to Rs.15,31,161/-. The assessee on being so pointed out by the Revenue accepted the demand of Rs.3,38,036/- and deposited the same for the period 2009-10. Thereafter, show cause notice dated 28/09/2012 was issued invoking the extended period of limitation demanding Service Tax of Rs.15,31,161/- for the period April, 2007 to March, 2010 with further proposal to appropriate the amount already deposited and further penalty was also proposed under Section 78. In response, the respondent filed his reply on 4 February, 2014 but the same was not taken into cognizance and vide ex parte Order-in-Original dated 10/02/2014, the proposed demand was confirmed with appropriation as proposed and equal amount of penalty of Rs.15,31,161/- was imposed under Section 78 of the Act.

2. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who have been pleased to allow the appeal in part reducing the amount confirmed to Rs.6,338/- and also reduced the penalty under Section 78 to the same amount and

further observed that recovery of tax on stayed amount will be subject to order of the Hon'ble Supreme Court on the issue. The Commissioner (Appeals) vacated the liability of Service Tax on the amount received Rs.26,07,244/- received from ICF AIA, treating it as an educational body, by relying upon the Final Order No. 1221-1224/2008 of this Tribunal dated 17/10/2008 in the case of ICFAI vs. Commissioner of Customs & Central Excise. The Commissioner also dropped the demand of Service Tax on receipt of gross value of services amounting to Rs.14,97,245/- on the ground that the amount was received for services provided before 01 June, 2007, when renting of immovable property was not covered under the levy of Service Tax. Further, learned Commissioner also allowed the deduction of an amount of Rs.43,44,000/- received by the assessee from service receiver namely V-Mart during 2009-10 from gross value of services covered in the impugned demand, on the ground that the amount pertain to the year 2009-10 for which period stay has been granted by Hon'ble Supreme Court. Thus, the Commissioner (Appeals) dropped the demand of Service Tax for Rs.11,86,787/- out of the adjudicated demand of Rs.15,31,161/-. Further, the Commissioner (Appeals) appropriated the Service Tax amounting to Rs.3,38,036/- deposited by the respondent assessee in the year 2010-11.

3. The learned A.R. for the Revenue urges that they are in appeal on the ground that the learned Commissioner (Appeals) have erred in dropping the demand of Service Tax on the gross value of services amounting to Rs.14,97,245/- being received before 01 June, 2007 when renting of immovable property was not a taxable service. The deductions have been allowed without submission of proof of any type of documentary or other evidence like invoices. So far dropping of demand on rent receipts of ICFAI is concerned, relying on the order of this Tribunal, it is urged that the same have not attained finality as the Hon'ble Supreme Court on the appeal filed by Revenue against the said Final Order, set aside the order and remitted the matter back to the Tribunal to consider the case *de novo* in the light of explanation inserted in Section 65(105) (zzc) of the Finance Act. Further, Tribunal in the final *de novo* order dated 31/07/2012 have held that ICFAI was providing commercial training or coaching services and such services provided by them were taxable service. So far deduction of an amount of Rs.43,44,000/- received by the assessee from the service receiver namely 'V Mart' during the period 2009-10 from gross value of services for which stay have been granted by Hon'ble Supreme Court. But deduction have been allowed without submission of any type of documentary or otherwise by the respondent-assessee

which could have established that V Mart was a member of the Retailer association of India as claimed. Further, the learned Commissioner (Appeals) have erred in reducing the amount of penalty.

4. The learned Chartered Accountant appearing for the respondent-assessee submitted that the Order-in-original being in gross violation of the principles of Natural Justice, as admittedly the assessee-respondent had filed reply to show cause notice on 04 February, 2014, but ignoring the same ex parte order was passed. In this view of the matter there are no merits in the appeal of Revenue. It is further urged that no case of suppression is made out against the respondent. The transactions were duly recorded in the books of accounts and disclosed in the balance-sheet and profit and loss account. The Revenue have wrongly demanded Service Tax on receipts prior to 01/06/2007 which have rightly been deleted by the Commissioner. So far demand of Service Tax on rent received from educational Institute- ICFAI is concerned the same have rightly been deleted. Further, while raising the show cause notice and confirming the demand the Revenue ignored the provisions of Rule 6 of Service Tax Rules and demanded Service Tax on bill raised basis instead of receipt basis. Further, demand raised on the receipts, were stay have been granted by Hon'ble Supreme Court, is

also bad. The audit team ignored the fact that profit and loss account is prepared on the basis of Income Tax Act wherein income is recognised on accrual basis and as such rent have been taken on accrual basis and/or billing basis, whether received or not. The appellant have rightly paid Service Tax on the rent received during the period on receipt basis. Further, the whole demand being for the extended period is time barred, there being no element of contumacious conduct and/or suppression on the part of the assessee. It also urged that initially with effect from 01/06/2007 when tax was levied on renting of immovable property it included renting, letting, leasing, licensing or other similar arrangement of immovable property for use in furtherance of business or commerce but did not include renting of immovable property to an educational body imparting skill or knowledge or lessons on any subject or field other than commercial training or coaching Centre. Further, vide amendment by Finance Act, 2010 the definition was amended and the amended definition with retrospective effect reads as follows :- "Any service provided or to provided to any person by any other person by renting of immovable property or any other service in relation to such renting for use in the course of for furtherance of business or commerce. Further, Section 77 of the Finance Act, 2010 validated the action already taken in connection with the levy of

Service Tax on renting of immovable property service. The learned counsel also placed reliance on a Co-ordinate Bench of this Tribunal in ***Jindal Vegetable Products Ltd. vs. CCE 2013(31) STR 367*** wherein this Tribunal observed that there was doubt regarding levy of tax on renting of immovable property and the same was put to an end by retrospective amendment by Finance Act, 2010 neutralizing the ruling of Delhi High Court in the case of ***Home Solution Retail (India) Ltd. vs. U.O. India, 2009 (14) STR 433***. In such case assessee cannot be accused of suppression of relevant information following the ratio in the case of ***Continental Foundation Joint Ventures 2007(216) E.L.T. 177 (SC)*** the extended period of limitation was held not invocable. The learned counsel have also relied on the ruling of Hon'ble Delhi High Court in the case of Home Solution Retail India Ltd. (*supra*) wherein vide order dated 18/04/2009 Hon'ble Delhi High Court had declared charging of Service Tax on renting of immovable property for use in the course of for the further purposes of business or commerce as *ultra vires* the provisions of the Act and had set aside the levy. The learned counsel also referred to the ruling of honourable Supreme Court in ***JK Spinning and Weaving Mills Ltd. 1987 (32) ELT 234*** wherein the Constitution Bench of the Hon'ble Apex Court held that in case of retrospective levy, the extended period of limitation is not invocable.

5. Having considered the rival contentions, I hold that under the facts and circumstances, the show cause notice is bad and the impugned demand is not sustainable. No case of any contumacious conduct and/or suppression on the part of the respondent is made out. It is further held that the appellant have rightly paid Service Tax on receipt basis. Accordingly, the appeal of Revenue is dismissed. The respondent assessee will be entitled to consequential benefits, if any in accordance with law. Stay application also stands disposed of.

(Order was dictated in the open Court)

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

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

Patel/-