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: 20/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71074/2017-SM[BR] dated 05/09/2017

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/70037/2016	**Delta Mechtek Services** 80-b,guru Nanak Nagar,naini ALLAHABAD UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Copy To

3Advocate(s) / Consultant(s):

S. P. Ojha
299, Baghambari Housing
Scheme, Allahpur,
Allahabad,
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, 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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/70037/2016-ST[SM]

(Arising out of Order-in-Appeal No. 156/ST/ALLD/2015 dated 15/09/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

M/s Delta Mechtek Services **Appellant**

Vs.

Commissioner of Central Excise & Service Tax,

Allahabad **Respondent**

Appearance:

Shri S. P. Ojha, Consultant, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing & Date of Decision : 05/09/2017

FINAL ORDER NO....71074/2017.....

Per: Ashok Jindal

The appellant is in appeal against the impugned order.

2. The brief facts of the case are that the appellant is contesting the various penalties imposed on the Appellant under Section 77 & 78 of the Finance Act, 1994. On the basis of information, an investigation was conducted and observed that the appellant was providing "works contract services" to M/s Indian Oil Corporation Limited & M/s Bharat Petroleum Corporation Ltd. during the period 01/06/2007 to March, 2011. The appellant registered themselves with Service Tax

Department on 12/06/2009 and paying Service Tax. Thereafter, on scrutiny of the records, it was found that the appellant was not paying Service Tax for the period prior to 12/06/2009. A Show Cause Notice dated 10/10/2012 was issued demanding Service Tax amounting to Rs.8,07,337/- along with interest and proposing for imposition of penalty under Section 77 & 78 of the Finance Act, 1994. The matter was adjudicated by the Original Authority vide Order-in-Original dated 05/03/2014, wherein he confirmed the demand of Rs.7,02,765/- and appropriated Service Tax amounting to Rs.7,09,809/- already paid by the appellant towards confirmed demand and interest. Further, he imposed penalty of Rs.1,000/- under Section 77, Rs.5,000/- under Section 77(2) & Rs.5,000/- or @ of Rs.2,00/- per day for every day during which such failure continued, whichever is higher starting with the first day after the due date, till the date of actual compliance, under the provisions of Section 77(1)(a) of the Act. He, further, imposed penalty of Rs.7,02,765/- under Section 78 of the said Act. Aggrieved by the said order, appellant preferred appeal before me.

3. The ld. Consultant for the appellant has submitted that appellant has paid the entire amount of Service Tax along with interest before issuance of the Show Cause Notice, therefore, no penalty is imposable on the appellant in terms of the order of the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise & Service Tax, LTU,

Bangalore *Versus* Adecco Flexione Workforce Solutions Ltd. reported at 2012 (26) S.T.R. 3 (Karnataka) therefore the penalties imposed on the appellant are fit to be set aside.

4. On the other hand, ld. A. R. for Revenue reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions and perused the facts on record.

6. On perusal of the record, I find that in this case after registration the appellant is paying Service Tax. The appellant has paid entire Service Tax along with interest prior to issuance of Show Cause Notice and the Department has appropriated the same against the confirmed demand of Service Tax and interest. In these circumstances, in terms of Section 73(3) of the Finance Act, 1994, the proceedings against the appellant case should not have been initiated. Therefore, the penalty is not imposable on the appellant in the light of the judgment of Hon'ble High Court of Karnataka in the case Adecco Flexione Workforce Solutions Ltd. (supra). In these circumstances, I set aside the penalty imposed on the appellant and rest of the impugned order is confirmed. In these terms the appeal is disposed of.

(Dictated & Pronounced in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

प्रमाणित प्रति/Certified True Copy
28/09/17

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

Ansari