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: 15/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71044/2017-SM[BR] dated 13/09/2017

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/70073/2015	**Ekram & Co** 19/120,vip Road,obra SONEBHADRA UP
		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):

SUYASH AGARWAL
ADVOCATE
21,KAMLA NEHRU
ROAD,ALLAHABAD-211002

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
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 13/09/2017.
DATE OF DECISION : 13/09/2017.

Service Tax Appeal No. 70073 of 2015 (SM)

[Arising out of the Order-in-Appeal No. 119/ST/APPL/ALLD/2013 dated 17/04/2015 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad.]

M/s Ekram & Co. — Appellant

Versus

CCE & ST, Allahabad — Respondent

Appearance

Shri Suyash Agarwal, Advocate – for the Appellant.

Shri Pawan Kumar Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71044/2017 Dated : 13/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed on them for the period 2006-2007 to 2009-2010 for the services provided by them for maintenance and repair of Obra Thermal Power Station, Obra.

Ashok Jindal

2. The brief facts of the case are that during the course of scrutiny of records it was found the appellant is providing services of repair and maintenance to M/s Obra Thermal Power Station, Obra and collecting service tax on the service provided by them and is not paying service tax to the Government. In these set of facts, a show cause notice issued to the appellant and the appellant contested the show cause notice saying that their turnover of services provided by them falls under the threshold limit of exemption, therefore they are not required to pay service tax. Accordingly, the impugned proceedings are not sustainable but the authorities below found that the appellant has collected service tax from the service recipient and the same has not been paid to the Department, confirmed the demand of service tax against the appellant. Aggrieved from the said order, appellant is before me.

3. The learned Counsel for the appellant submits that as the taxable turnover is within the threshold limit of exemption, therefore, they are not required to pay service tax. In that circumstances, the demand of service tax is not sustainable and the impugned order to be set aside.

4. With regard to the penalty, he submits although they have collected service tax from the service recipient but they were under bonafide belief that they are falling within the threshold limit of exemption they did not paid the service tax, therefore, no penalty imposable on the appellant.

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5. The learned AR reiterated the findings of the impugned order.

6. Heard the parties considered the submissions.

7. In this case demand of service tax has been confirmed on the ground that appellant has collected service tax and did not deposit the same with the Government treasury. Although, the taxable turnover falls within the exemption limit of of Rs. 4 lakhs during the impugned period but the appellant has collected service tax from the service recipient. In that circumstances, the appellant cannot retain the said amount with them, therefore, the appellant are required to pay the amount of service tax collected by them alongwith interest. In these circumstances, it cannot be said that appellant was under bonafide belief that they are not required to pay service tax. Therefore equivalent amount of penalty is confirmed under Section 78 of the Finance Act, 1994.

8. With these terms, I do not find any infirmity in the impugned order, the same is upheld. The appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

प्रमाणित प्रति/Certified True Copy

27/09/17

सहायक पंजीकार/Asstt. Registrar

सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर

अपील अधिकरण/C.E.S.T.A.T.

38, एम.जी.मार्ग, इलाहाबाद-211001

38, M. G. MARG, ALLAHABAD-211001

PK