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: 31/10/2017

To

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

Final Order No. A/71278/2017-SM[BR] dated 13/10/2017

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/70083/2016	**Pranay Towers** 16-a Model Town BAREILLY UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

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

K.VAISH &CO
KRISHNA JANKI PALACE,35-C,RAMPUR GARDEN, Civil Lines, BAREILLY,
U.P-243001

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70083/2016-ST[SM]

(Arising out of Order-in-Appeal No. HPU/EXCUS/000/APPL-I/207/2015-16 dated 09/09/2015passed by Commissioner of Central Excise(Appeals-I), Meerut)

M/s Pranay Towers **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Kapil Vash, Charted Accountant, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	13/10/2017
Date of Decision	:	13/10/2017

FINAL ORDER NO: 71278/2017...........

Per: Anil Choudhary

The issue involved in this appeal is whether demand under the classification of 'Renting of Immovable Property' can be raised by invoking the extended period of limitation.

2. The brief facts of the case as per the show cause notice are that the appellant having service tax registration for providing taxable services under the category of 'Renting of Immovable Property'. They paid

service tax from the date of liability 1st June, 2007 to 31st March, 2009. Thereafter, in view of ruling of Hon'ble Delhi High Court in the case of M/s Home Solutions Retail (I) Ltd. Vs Union of India reported at 2009 (14) STR 433 (Del.) wherein it was held that service of renting of immovable property by itself cannot be regarded as service. Subsequently, vide Finance Act, 2010, the Government amended Section 65 (105) (zzzz) by expanding its scope to include even the renting of immovable property as service taxable under this entry with retrospective effect. The appellant after the amendment again started paying the service tax with effect from April, 2010. Thereafter, a show cause notice dated 25th May, 2014 was issued to the legal heir, demanding service tax under the liability for the period from April, 2009 to March 2010.

3. Heard the parties.

4. The learned Counsel for the appellant states that the issue is no longer res-integra, under the similar facts and circumstances, this Tribunal in the case of M/s Jindal Vegetable Products Ltd. Vs CCE reported at 2013 (31) STR 367 (Tri.-Del.) held that service tax under the 'Renting of Immovable Property' was demanded invoking

the extended period relating to the period 2007-08 and 2008-09. It was held that the appellant cannot be accused of suppressing the relevant information from the Department, as during the period of dispute there was doubt about the levy of service tax on renting of immovable property till the dispute was put to an end by retrospective amendment made by Finance Act, 2010. Reliance was placed on the ruling of Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs Commissioner reported at 2007 (216) ELT 177 (SC) wherein it was held that when during the period of dispute there was doubt about interpretation of some provisions of law on account of conflicting judgments, which were latter on resolved by a Larger Bench, the extended period under proviso to Section 11 A (1) cannot be invoked. Relying on the said judgment this Tribunal held that the extended period of limitation under proviso to Section 73 (1) would not be applicable and for the same reason, the penalty under Section 78 of the Finance Act, 1994 also would not be attracted, as the elements required for invoking longer limitation period under proviso to Section 73 (1) are the same as those required for imposing penalty under Section 78 of the Act.

5. Having consider the rival contention and on perusal of order of this Tribunal in the case of M/s Jindal Vegetable products Ltd. (supra), I find that the aforementioned ruling is squarely applicable on the facts of the present case. Accordingly, I allow this Appeal and set aside the impugned order by holding that the show cause notice is not maintainable.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
02/11/17
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