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: 24/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71266-71267/2017-SM[BR] dated 17/10/2017

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/70087/2016	**G B Automobiles** Mohalla-kashim Bazar BALLIA UP
2	ST/70716/2016	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
		Name and Address of Respondent
3		G B Automobiles Mohalla-kasim Bazar,, BALIA ,U.P.
4		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

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

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, Opp ICICI Bank of Defence Colony 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,Punjagutta 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 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos.ST/70087 & 70716/2016-ST[SM]

(Arising out of Order-in-Appeal No. 174/ST/ALD/2015 dated 30/09/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Customs, C.E. & S.T., Allahabad

(in Appeal No.70716/2016)

M/s G.B. Automobiles, (in Appeal No.70087/2016) **Appellants**

Vs.

M/s G.B. Automobiles,

Commissioner of Customs, C.E. & S.T., Allahabad **Respondents**

<u>Appearance:</u>

Shri Gyanendra Kumar Tripathi, Assistant Commr. (AR)	for Revenue
Shri Suyash Agarwal, Advocate,	for Assessee

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	17/10/2017
Date of Decision	:	17/10/2017

FINAL ORDER NOs.-71266-71267/2017

Per: Anil G. Shakkarwar

The above stated two appeals are arising out of a common Order-in-Appeal No. 174/ST/ALD/2015 dated 30/09/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad. One appeal is filed by M/s G.B. Automobiles and other appeal is filed by Revenue. Both appeals are taken up together for disposal.

2. Brief facts of the case are that M/s G.B. Automobiles were registered with Central Excise and Service Tax Department under the category 'Authorized Service Station Service'. Some enquires were conducted with them which resulted the issuance of show cause notice dated 05.04.2013. Through the said show cause notice M/s G.B. Automobiles were called upon to show cause as to why service tax amounting to Rs.10,25,381/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 along with interest at the appropriate rate as provided under Section 75 of the said Act. It was further stated in the said show cause notice that M/s G.B. Automobiles had paid service tax of Rs.10,27,885/- vide TR-6/GAR-7/e-payments against their liabilities along with interest, why the same should not be appropriated against their liabilities. The issue was decided through the Order-in-Original dated 09.05.2014 wherein the original authority confirmed the demand and also imposed equal amount of penalty under Section 78 of the Finance Act, 1994. Aggrieved by the said order, M/s G.B. Automobiles preferred an appeal before the

Commissioner (Appeals). M/s G.B. Automobiles made averment before the learned Commissioner (Appeals) that the act of issuance of show cause notice dated 05.04.2013 was void under Sub-section (3) of Section 73 of the Finance Act, 1994. The learned Commissioner (Appeals) gave option to redeem 25% penalty under Section 78 of the Finance Act, 1994 to M/s G.B. Automobiles to be paid within a period of one month. Aggrieved by the said order, both M/s G.B. Automobiles and Revenue are before this Tribunal. The ground of appeal by M/s G.B. Automobiles was that the suppression existed only when there is a deliberate default in the payment of tax intentionally. The ground of appeal of Revenue is that the Commissioner (Appeals) does not have authority to reduce the penalty under Section 11AC of the relevant proceedings.

3. Heard the parties and perused the records.

4. After hearing both sides and on perusal of records, I find that it is fundamental principle that all the provisions of law which can be exercised by the original authority can be exercised by the appellate authority. In the present case the option of payment of reduced penalty within one month is provided under Section 78 of

the Finance Act, 1994. Therefore, order by the learned Commissioner (Appeals) to allow payment of reduce penalty, as provided under proviso to Section 78 of the Finance Act, 1994, was as per law. Therefore, I do not find any merit in the grounds of appeal preferred by Revenue. I therefore, hold that the impugned Order-in-Appeal is sustainable, as per law. As a result, the appeal filed by M/s G.B. Automobiles also does not survive.

5. Accordingly, I uphold the impugned Order-in-Appeal and dismiss both the appeals.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
31/10/17

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