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: 06/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70155-70156/2017-SM[BR] dated 27/01/2017

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/70245/2016	ST/70411/2016	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
2		ST/70594/2016	**Apex Institute** 47-a, C.y Chintamani Marg, ALLAHABAD U.P.

	Name and Address of Respondent
3	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
4	Apex Institute 47-a,c.y. Chintamani Marg,, ALLAHABAD ,UP

Other Appellants and Respondents as per Annexure
Copy To
5Advocate(s) / Consultant(s):

Sanjay kumar Adv (A)
40-G, Sardar patel marg,
allahabad-211001

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, 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 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/Stay/70245/2016
Appeal Nos. : ST/70594 & 70411/2016-ST[SM]

Arising out of OIA No. 230/ST/ALLD/2015 dated 24.11.2015 passed by Commissioner (Appeals), Central Excise, Allahabad.

I. Apex Institute (ST/70594/2016)
II. Commissioner of Central Excise & Service Tax, Allahabad (ST/70411/2016)

...APPELLANTS

VERSUS

I. Commissioner of Central Excise & Service Tax, Allahabad.
II. Apex Institute

...RESPONDENTS

APPEARANCE

Shri Sanjay Kumar & Ms. Keerti Kataria, Advocates for the assessee-appellant.
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 27. 01. 2017
FINAL ORDER NO. 70155-70156/2017

Per Mr. Anil G. Shakkarwar :

The present two cross appeals are arising out of impugned Order-in-Appeal No. 230/ST/ALLD/2015 dated 24.11.2015. Appeal No. ST/70594/2016 is filed by M/s. Apex Institute and Appeal No. ST/70411/2016 is filed by Revenue.

2. The brief facts of the case are that, M/s. Apex Institute was engaged in providing commercial training or coaching services. On 05.01.2011 departmental officers visited the business premises of the assessee-appellant and collected certain documents required for investigation including application forms submitted by students for coaching for the year 2010-11. They also inquired with the Manager about the fee structure. It was told by the Manager that fee for one subject was Rs. 5000/- and Rs. 8000_- for two subjects and Rs. 27,000/- for all subjects. Thereafter they collected some information from the students about the free paid by them. On the basis of information in the application forms submitted by the students which were found in the business premises of the appellant, about the number of subjects in which each student was seeking coaching and on the basis of information on fee structure given by the Manager concerned total fee that would have been collected by M/s. Apex Institute was computed to be Rs. 1,57,83,000/- and on the said computed amount a demand of service tax of Rs. 13,80,461/- was raised through show cause notice dated 11.03.2013 under Section 73 of Finance Act, 1994. There were proposal for imposition of penalty. M/s. Apex Institute in their reply dated nil on 25.11.2013 before the Original Authority submitted that the receipt of the fee paid by the students was given to the students and the amount collected was deposited in the bank account and further submitted that during the year 2010-11 till December they had collected only Rs. 8,91,000/- and in the month

of January, 2011, they collected Rs. 4,19,500/- as fee from the students. They further contended that it was not possible to them to realize fee as per the fee structure and the fee is settled in between the institute and students after allowing incentives. They further contended that the fee recorded by the students before Investigating Officer clearly indicated that the actual fee paid by them was much below the fee structure and therefore the quantification of Service Tax on the basis of fee structure of the institute was erroneous. They further contended that the department did not adduce any evidence to prove that M/s. Apex Institute had received coaching fee of Rs. 1,57,83,000 in the year 2010-11. The Original Authority did not appreciate the arguments put forth and confirmed the demand and imposed equal penalty. Aggrieved by the said order, M/s. Apex Institute preferred appeal before the Commissioner (Appeals) which was decided through Order-in-Appeal No. 230/ST/ALLD/2015 dated 24.11.2015. Before the learned Commissioner (Appeals) they submitted that total 804 application forms were resumed out of which 528 opted for combined course and remaining 276 opted for individual courses and that out of 528 students 409 were repeaters and 119 were fresher. Further submitted that out of 276 students 210 were repeaters and only 66 were fresher. They further contended that they had disputed the computation of their receipt on the basis of fee structure and that the department has not established that they had received fee of Rs. 1,57,83,000/- in the year 2010-11. To ascertain the genuineness of the contentions of M/s. Apex Institute, learned Commissioner (Appeals) issued a letter dated 18.06.2015 to the jurisdictional Assistant Commissioner for submission of factual report. A reminder dated 26.08.2015 and another reminder dated 19.10.2015 was also issued. However, learned Commissioner (Appeals) did not received required report from Divisional Assistant Commissioner and therefore without such report he has decided the appeal through above stated OIA dated 24.11.2015. While deciding the appeal, the learned Commissioner (Appeals) has reproduced para-4 of the Order-in-Original dated 24.03.2014 and did not interfere with the demand confirmed. However, he has given option to the assessee-appellant to said appeal to pay 25% of the penalty within 30 days of receipt of said Order-in-Appeal. Aggrieved by the said order, M/s. Apex Institute preferred appeal before this Tribunal. Further, aggrieved by the order of learned Commissioner (Appeals) having given option of 25% pay of penalty, Revenue have preferred appeal before this Tribunal.

3. Heard the learned D.R. for appeal by Revenue. Learned D.R. has submitted that the department has contended that option to pay reduced penalty has to be provided by Original Authority and Commissioner (Appeals) does not have any such authority under the law and therefore said part of the impugned Order-in-Appeal is bad in law.

4. Heard the learned counsels for assessee-appellant. He has submitted that on the basis of forms available with the institute and

on the basis of statement of Manager that the institute charges Rs. 5,000/- for one subject, Rs. 8,000/- for two subjects and Rs. 27,000/- for all subjects, realization of fee by the institute was computed through the said show cause notice, whereas in fact there was discrepancy between the presumptive fee taken into consideration for computation of Service Tax demanded and actually paid by the students and further he has submitted that the factual report sought by learned Commissioner (Appeals) was also not available to him for consideration. Therefore, impugned Order-in-Appeal is bad in law.

5. Having considered the rival contentions and on perusal of records, I find that learned Commissioner (Appeals) in his finding on page-3 of impugned Order-in-Appeal has reproduced para-4 of the Order-in-Original dated 24.03.2014, wherein it is stated that the entire taxable value and service tax liability have been calculated on the basis of above fee structure and number of filled admission form recovered from the premises of the party during the search on 05.01.2011. I find that appellant has repeatedly stated that the department has failed to establish that they had actually received Rs. 1,57,83,000/- in the form of fee for the year 2010-11. I find that the contention of the M/s. Apex Institute that department has filed to prove that Apex Institute collected Rs. 1,57,83,000/- in the year 2010-11 is worth consideration for the reason that Original Authority and Commissioner (Appeals) have confirmed that the calculation of taxable value and Service Tax liability was on the

basis of forms recovered and the standard fee structure informed by the Manager of the institute and it was not on the basis of either fee receipt or books of account or bank statement. Therefore, I hold that impugned show cause notice is presumptive in nature. Therefore, the said show cause notice dated 11.03.2013 is not tenable in law. I, therefore, allow the appeal (ST/70594/2016) filed by M/s. Apex Institute and reject the appeal (ST/70411/2016) filed by Revenue. The stay application also filed by Revenue stands disposed off. M/s. Apex Institute is entitled to consequential relief, if any, as per law.

(Pronounced and dictated in the open Court)

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

Patel/-

प्रमाणित प्रति / Certified True Copy
9.2.17
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