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: 12/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70947/2017-SM[BR] dated 06/09/2017

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/70486/2016	**Sana Construction Co** Esib/268, Sector-a, Sitapur Road, Yojna Aliganj LUCKNOW U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

VINEET K SINGH
NARIAN NAGAR,Sector-11,
Indira Nagar, Lucknow UP

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 : 06/09/2017.
DATE OF DECISION : 06/09/2017.

Service Tax Appeal No. 70486 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 189/ST/APPL-LKO/LKO/2016 dated 12/03/2016 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

M/s Sana Construction Co. Appellant

Versus

CCE & ST, Lucknow Respondent

Appearance

Shri Vineet K. Singh, Advocate – for the Appellant.

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

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

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Final Order No. 70947/2017 Dated : 06/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein appeal has been dismissed by the learned Commissioner (Appeals) as the time barred.

2. Heard the parties perused the record.

Ashok Jindal

3. On perusal of the record, I find that in the impugned order the learned Commissioner (Appeals) has recorded that the impugned order passed by the adjudication order was received by the appellant on 20th May, 2014 and the appeal has been filed before him on 20th August, 2014. Learned Commissioner (Appeals) dismissed the appeal as time bar as same has been filed after 90 days of receipts of the order. Aggrieved from the said order, the appellant is before me.

4. As the facts of the case are not in dispute that the adjudication order was received on 20th May, 2014 and the appeal was filed before the learned Commissioner (Appeals) on 20th August, 2014, therefore, it is to be seen whether appeal has been filed within condonable period or not?

5. As per the Section 85 (3) (a) of the Finance Act, 1994, the time limit for filing the appeal before learned Commissioner (Appeals) is two months from the receipt of the adjudication order and the said period can be extended by another one month if Commissioner (Appeals) is satisfied that appellant has sufficient reason for causing delay in presenting the appeal. Therefore, overall period for filing the appeal under Section 85 (3) is three months and the appeal has been filed by the appellant within three months.

6. In that circumstances, the observation made by the learned Commissioner (Appeals) in the impugned order that appeal has been filed, beyond prescribed time of limitation by counting the

period in days but the law mandates, that the appeal is required to file within two months not in 60 days. Therefore, the learned Commissioner (Appeals) failed to interpret the correct law for filing the appeal.

7. As appeal has been filed by the appellant within prescribed time limit as per Section 85 (3) of the Finance Act, therefore, I hold that appeal was filed by the appellant before Commissioner (Appeals) within time.

8. In that circumstances, I set aside the impugned order and remand the matter back to the learned Commissioner (Appeals) to decide the issue on its own merits. Appeal is disposed of by way of remand.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
26/09/17
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