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: 27/09/2017

To

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

Final Order No. A/71143/2017-SM[BR] dated 18/09/2017

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/70489/2016	**A T N ADVERTISING SERVICES** B-43, G.T.B. NAGAR, KARELI ALLAHABAD U.P.
		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):

SITA RAM CONSULTANT
C/O R.R.BANOUDHA, 3B/1A,
TEJ BAHADUR SAPRU MARG, ALLAHABAD-211001

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
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No: ST/70489/2016-ST[SM]

(Arising out of Order-in-Appeal No. 176-ST/LKO/2016 dated 25/02/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s A T N Advertising Services — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad — **Respondent**

Appearance:

Shri Sita Ram (Consultant) — for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR — for Respondent

CORAM:

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

Date of Hearing : 18/09/2017
Date of Decision : 18/09/2017

FINAL ORDER NO.- 71143/2017......

Per: Anil Choudhary

The issue in this appeal is whether service tax have been rightly quantified by the Learned Commissioner (Appeals) and secondly, whether the appellant is liable to pay service tax on the construction of drive way at the petrol pump constructed by them.

2. Show cause notice was issued demanding service tax for the period June, 2007 to 2011-12, amounting to Rs.18,06,122/- + Cess totalling Rs.18,60,305/-. The appellant had appeared and contested the show cause notice

and also pointed out that the show cause notice issued on the basis of information supplied by the contract namely IOCL are not correct and accordingly the service tax payable by them will be Rs.8,80,746/-.

3. The SCN was adjudicated on contest and the proposed demand was confirmed along with penalty under Section 77 and also under Section 78. Being aggrieved the appellant had preferred appeal before Learned Commissioner (Appeals) who has been pleased to appreciate that there has been error in calculation of the tax and the figures supplied by IOCL not correct and accordingly recorded the following findings: -

"I have gone through the chart provided by the appellant I agree with the contention of the appellant that some of the P.O. Nos. and amounts mentioned in the Annexure to the SCN was repeatedly shown. It is very surprising that the same amount i.e. Rs.5,14,226/- is mentioned against 27 P.O.'s. In so many cases the same amount is repeated against three to four P.O.'s. Such apparent mistakes have been overlooked by the adjudicating authority on technical ground that the work orders did not contain the signature of the issuing authority of IOCL. I also find that the respondent department has not controverted the ground pointed out by the appellant till date, even though the grounds taken by the appellant was forwarded on 23/05/2014.

The appellant has contended that they have not received service tax component from the service recipient, thus, the

Arn

taxable value should be arrived at in terms of Section 67 (2) of the Act. I observe that Section 67 (2) of the Act provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. I therefore, find that the reverse calculation is to be done in terms of Section 67 (2) of the Act."

4. Further as regards the taxation of drive way constructed in the petrol pumps, it was held that the same is not a public road and a part of the commercial complex and as such is taxable. Accordingly, the Learned Commissioner (Appeals) confirmed a reduced amount of Rs.10,04,094/- and also reduce the penalty under Section 78 proportionately and further was pleased to reduce the penalty under Section 77(1) (a) to Rs.5000/- and set aside the penalty imposed under Section 77(2) of the Finance Act.

5. The appellant being aggrieved is before this Tribunal on the ground that the Learned Commissioner (Appeals) have erred in allowing tax on the construction of drive way which is in the teeth of the ruling of this Tribunal in CST Vs. M/s Shilpa Constructions Pvt. Ltd. 2010 (19) S.T.R. 830 (Tri.-Ahmd.) Division Bench. Further he states that the turnover figures provided by the appellant are verifiable from the records and in case of doubt, the authority could have verified the same from IOCL. Accordingly prays for allowing

the appeal by remand with directions.

6. The Learned AR for Revenue relied on the impugned order.

7. Having considered the rival contentions I hold that construction of drive way in the petrol pump is not taxable in view of the C.B.E.C. clarification dated 27/07/2005, wherein clarified that the benefit of drive way in commercial complex is to be allowed if the activity is recognized separately in the contract. I further find from the schedule of rates of the Work Order No. 17979857 dated 06/08/2009, wherein the details for "Construction of RCC Culvert & Allied works" is given which also includes the work of drive way. Accordingly I hold that the appellant is not liable to pay service tax for the construction of drive way. Further, I find that the Learned Commissioner found that there are errors in the calculation of gross amount taxable. Accordingly, for the limited purpose of calculation of the gross amount taxable and the tax payable, I remand the matter to the adjudicating authority who shall hear the appellant and after perusing the evidence led before him and obtaining any information required as fit, will ~~to~~ pass the reasoned order in accordance with law. Giving the cum-duty benefit as held by the Learned Commissioner (Appeals). The penalty imposed under Section 78 shall also stand modified accordingly. Appellant shall be entitled for consequential benefits if any in accordance with law.

8. The appellant is also directed to appear before the

adjudicating authority within a period of 45 days from receipt of a copy of this order along with the ~~definition~~ representation and seek opportunity of hearing.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
12/10/17
सहायक रजिस्ट्रार/Asstt. Registrar