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: 17/11/2017

To

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

Final Order No. A/71430/2017-SM[BR] dated 14/11/2017

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/70506/2017	**Birla Institute Of Management Technology** Plot No-5,knowlwdge Park-2 Greater Noida GAUTAM BUDH NAGAR UP- 201306

Name and Address of Respondent

2 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

Sanjay Jain, CA
814,NEW DEHLI HOUSE,
BARAKHAMBA ROAD,
CANNAUGHT PALACE, NEW DEHLI- 110001

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/70506/2017-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/02/2017-18 dated 05/04/2017 passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s Birla Institute of Management Technology	**Appellant**
Vs.	
Commissioner (Appeals) Central Excise Appeals-I	**Respondent**

Appearance:

Shri Sanjay Jain (CA)	for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR	for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing	:	14/11/2017
Date of Decision	:	14/11/2017

FINAL ORDER NO- 71430/2017.........

Per: Archana Wadhwa

The challenge in the present appeal is to penalties imposed under Sections 73, 77 and 78 of the Finance Act, 1994 as also under Section 70(a) of the Act read with Rule 7 and Rule 7C of the Service Tax Rules, 1994.

2. The issue relates to late registration with the Service Tax Department for not paying the Service Tax of Rs. 34,262/- on Reverse Charge Basis and the late filing the ST-3 returns. It is seen that the fact of the assessee having been

received the services, was detected by the audit from the records maintained by the appellant, in the ordinary course of their business.

3. The appellant's contention is that inasmuch as, they were reflecting the entire facts in the records maintained by them, it cannot be said that there was any malafide on their part, thus justifying imposition of penalties. As soon as the short levy was pointed out by the audit, the same was deposited alongwith interest. Inasmuch as the tax stands confirmed against them in respect of commercial training or coaching, they were under bonafide belief that the same was part and parcel of educational services, which were not taxable during the period in question and that is why, no registration was taken by them. As they have deposited the entire service tax alongwith interest before the issuance of the show cause notice, the benefit of Section 80 as it existed during the relevant period, should be extended to them.

4. The lower authorities have simpliciter observed that every tax defaulter can take a plea that they were under the bonafide belief and the tax was not payable. Inasmuch as, there was no ambiguity in law, the appellant should have understood the same correctly and should have paid the duty.

5. After hearing both the sides, I find that the Tribunal in number of decisions, has held that when the law is not clear, the assessee cannot be held guilty of any suppression etc in the absence of any evidence to the contrary. In the present case, the appellants have contended that though they were providing the commercial training or coaching but they were under a bonafide belief that the same was part of the educational service, which were admittedly not taxable during the relevant period. There could be a doubt entertained by the assessee. When the assessee is reflecting all their business activities in their balance sheet, no malafide can be attributed to them. The Tribunal in the case of Shaper India Pvt. Ltd. vs. Commissioner of Central Excise, Pune, reported at 2015 (7) TMI 141-CESTAT Mumbai, has held to that effect.

6. In view of the foregoing, I find no justifiable reason to impose penalties upon the appellant. The same are accordingly set aside and appeal is allowed to that extent.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Anku

प्रमाणित प्रति/Certified True Copy
11/12/17
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