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: 22/11/2017

To

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

Final Order No. **A/71541/2017-SM[BR]** dated **15/11/2017**

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/70557/2016	**Sudama Construction Prop** Manoj Kumar Pathak, Kota, Kajarahat, Dalla, SONEBHADRA U.P. 231207
		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):

K.R.SINGH ADVOCATE
PIPARI ROAD,
ROBERTSGANJ,
SONEBHADRA (U.P.)

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/70557/2016-ST[SM]

(Arising out of Order-in-Appeal No.274/ST/APPL-ALLD/LKO/2014 dated 05/04/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Sudama Construction Prop — Appellant

Vs.

C.C.E. & S.T.- Lucknow — Respondent

Appearance:

Shri K.R. Singh (Adv) — for Appellant
Shri Pawan Kumar Singh — for Respondent

CORAM:

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

Date of Hearing : 15/11/2017
Date of Decision : 15/11/2017

FINAL ORDER NO-.70541/2017........

Per: Mrs. Archana Wadhwa:

The appellant is a small contractor and was providing its services to M/s Dalla Cement Factory and was duly registered with the Service Tax Department. As per the account maintained by M/s Dalla Cement Factory, the services were provided by the appellant but no service tax was paid by them for the period Sept. 2010 to March, 2011. Accordingly, proceedings were initiated against the appellants.

2. As the appellant had already deposited the service tax of Rs. 91,000/- approximately alongwith interest, penalty of the equal amount was imposed upon him. The same was upheld by Commissioner(Appeals) and hence the present appeal.

3. The only challenge in the appeal is to penalty imposed by the lower authorities.

4. The learned advocate appearing for the appellant submits that they were depositing the service tax on receipt basis i.e. as and when the consideration for the services provided to M/s Dalla Cement was received by them whereas, M/s Dalla Cement was maintaining the records on ~~approval~~ accrual basis. The said ~~effect~~ fact has led to the short payment of service tax, which, in any case, was to be deposited by them on receipt of consideration from the service recipient. In such a scenario it cannot be stand that there was any malafide on their part, thus leading to imposition of penalty.

5. I find that there is no rebuttal to the above fact placed before the authorities below. The demand of service tax ~~is~~ raised on account of the different modes of accounts being maintained by the service provider and the service recipient. It is not a case of non-levy or non-payment on account of any misstatement or suppression of facts ~~which~~ with intend~~s~~ to ~~the~~ evade payment of duty. As such I find no reason to uphold the penalty imposed upon the appellant. The same is accordingly set aside. The appeal is allowed in above terms.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS

प्रमाणित प्रति/Certified True Copy

07/12/17

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