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: 11/09/2017

To

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

Final Order No. A/70882/2017-SM[BR] dated 22/08/2017

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/70838/2016	**Appolo Travels & Tours** S-26,ground Floor ,vikas Deep,22 Station Road LUCKNOW (UP)
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, (UP)-226001

Copy To
3Advocate(s) / Consultant(s):

DUSHYANT KUMAR
19/849 INDIRA NAGAR
LUCKNOW 226016

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/70838/2016-ST[SM]

(Arising out of Order-in-Appeal No. 359-ST/APPL-LKO/LKO/2016 dated 09/05/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Appolo Travels & Tours **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri Dushyant Kumar (Consultant) for Appellant
Shri Pradeep Kumar Dubey (Supdt.) AR for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 22/08/2017
Date of Decision : 22/08/2017

FINAL ORDER NO.-70882/2017......

सीमा शुल्क उत्पाद एवं सेवा कर अपील अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 359-ST/APPL-LKO/LKO/2016 dated 09/05/2016 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

2. The brief facts of the case are that the appellants were issued with a show cause notice dated 15/10/2013, wherein it was contended that appellant were liable to pay Service Tax amounting to Rs.42,21,400/- under the 'Rent-A-Cab Scheme

Operator's Service' which was not paid by appellant during the period from 01/04/2008 to 31/03/2012. Through the said show cause notice said amount of Service Tax was demanded under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994. The said show cause notice was adjudicated through Order-in-Original dated 30/07/2015. The appellant contended before the original authority that the show cause notice was based on the data in the balance sheet and for 'Rent-a-Cab service' they had filed ST-3 return and that the consideration on which tax was not paid was received for providing heavy vehicles through which materials were supplied to military. The original authority held that the details provided by the appellant about the heavy vehicle transportation for Defence were not supported with any invoice or consignment note and that such information was also not submitted in ST-3 return. Therefore, he confirmed the demand of Rs.42,21,400/- and also imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) decided the appeal through the impugned Order-in-Appeal dated 09/05/2016. The Learned Commissioner (Appeals) in Para-10 of his Order-in-Appeal has re-calculated the Service Tax liability on the appellant and held that services provided by appellant to military are covered under the category of transport of goods by road and upheld the confirmation of demand of Service Tax to the extent of Rs.11,28,095/-. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the Learned Consultant for appellant, who has submitted that the Learned Commissioner (Appeals) has held that the appellant were liable to pay service tax of Rs.11,28,095/- under the category of transport of goods by road and there was no such proposal in the show cause notice. Therefore, that part of the Order-in-Appeal through which demand of Rs.11,28,095/- was upheld merits to be set aside and prayed that impugned Order-in-Appeal ~~is~~ be modified.

4. Heard the Learned A.R. who has submitted that the said show cause notice dated 15/10/2013 had made a mention of appellant providing 'Goods Transport Agency Service', therefore, appeal may be dismissed.

5. Having considered the rival contentions, I find that the show cause notice raised the demand of Rs.42,21,400/- under 'Rent-A-Cab Scheme Operator's Service'. The original authority confirmed the demand under 'Rent-A-Cab Scheme Operator's Service' and Learned Commissioner (Appeals) has held that out of the said demand Rs.11,28,095/- was liable to be upheld under Transport of Goods by road. I find that such finding that the appellant was required to pay service tax of Rs.11,28,095/- on transport of goods by road is beyond the

proposal in the show cause notice. Therefore, I set aside that part of the impugned Order-in-Appeal through which Learned Commissioner (Appeals) has upheld the confirmation of demand of Rs.11,28,095/-. I further, modified the impugned Order-in-Appeal to that extent. I further, find that the relief sought by the appellant in the present appeal was for modification of impugned Order-in-Appeal to the extent that the demand of Service Tax of Rs.11,28,095/-, is set aside.

6. In above terms, appeal is allowed. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

Akp

[illegible] True Copy
21/09/12
[illegible] Registrar
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38, [illegible] 211001
38, [illegible] ALLAHABAD 211001