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: 12/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70150/2018-CU[DB] dated 09/01/2018

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/164/2012	**DARPAN ADVERTISERS,** NEAR PRAKASHAN KENDRA, OPPOSITE KABIR MANDIR, SITAPUR ROAD, LUCKNOW.
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

VINEET K SINGH(Adv.)
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, 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/164/2012-CU[DB]

(Arising out of Order-in-Appeal No. 293-ST/LKO/2011 dated 19/10/2011 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Darpan Advertisers **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Absent on call for Appellant
Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/01/2018
Date of Decision : 03/01/2018

FINAL ORDER NO.- 70150/2018

Per: Archana Wadhwa

On matter being called neither anybody appeared nor is there any adjournment request in spite of the notice of hearing having been sent to the appellant. Accordingly we have heard the Learned A.R. and have gone through the impugned order.

2. As per the facts on record appellant is engaged in providing services under the category of advertisement agency, for which purposes they are engaged with the

Department. As a result of audit conducted in their premises, it was found that the appellant did not pay service tax during the period 2003 to 2008 in respect of the services falling under the said category, though appellant was providing identical services to their clients, but were paying Service Tax selectively i.e. in respect of certain services they were collecting the tax from their customer and depositing with the revenue and in respect of the same identical services, they were not collecting the tax and were not accordingly paying the same.

3. In view of the above, proceedings were initiated against them by way of issuing a show cause notice dated 16/10/2008 raising demand of Rs.8,62,729/-. The same was confirmed by the Original Adjudicating Authority along with the confirmation of interest and imposition of penalties.

4. Before Commissioner (Appeals) the appellant took a stand that all the services being provided by them were not taxable services and as such no tax was being paid on the same. However it is noted that the attention of authorities below was not drawn to such non-taxable services.

Appellate Authority observed that services provided by the appellant to his various customers were identical services and whereas in many cases they have collected and paid the tax, in respect of the others he did not. Accordingly the impugned order was upheld and appeal was rejected. Hence the present appeal.

5. On going through the grounds of appeal we note that the same are general grounds without referring to any distinct services having been provided by the appellant, falling under the category of non-taxable services. However they have submitted that the services rendered by them came into existence for the first time with effect from 01/05/2006 and as such confirmation of demand before the said period was not justified.

6. Inasmuch as the said issue raised by the appellant has not been considered by the Lower Authorities, we deem it fit to set aside impugned order and remand the matter to Original Adjudicating Authority. Inasmuch as the matter is being remanded, the Adjudicating Authority would also give an opportunity to the appellant to put forth documentary evidences to show and establish that wherever Service Tax has not been paid by them, the services were different then the advertising services and

were non-taxable during the relevant period. Issue of time bar is also being left open for the Original Adjudicating Authority to re-decide.

7. In view of the above, the impugned orders are set aside and appeal is allowed by way of remand.

(Pronounced in Court on....9/1/18)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Lks

प्रमाणित प्रति/Certified True Copy
12/02/18