REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 28/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70050-70051/2015- dated 20/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

28/10/15

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/55043&54429/2014	TEREX EQUIPMENT PVT LTD PLOT O 22, UDYOG VIHAR GREATER NOIDA, G.B.NAGAR UP

Name and Address of Respondent	CCE NOIDA C-56/42, SECTOR 62, NOIDA(UP))

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9, NEW KAVI NAGAR
GHAZIABAD(UP)..

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex. Appeal Nos.55043 & 54429/14

Arising out of OIA No.NOI/EXCUS/000/APP/54-55/2014 dated 27.02.2014 passed by Commissioner of Central Excise (Appeals) & S. Tax, Noida

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Tyrex Equipment Pvt. Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Noida RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. & Shri Nitin Jindal, C.A. for the Appellant (s)
Shri Ashok B. Kulgod, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 20. 10. 2015

Final ORDER NO. 70050- 70051 | 2015

Per Mr. Anil Choudhary :

Both the appeals arise from common OIA No.NOI/EXCUS/000/APP/54-55/2014 dated 27.02.2014 passed by Commissioner of Central Excise (Appeals) & S. Tax, Noida. The Ex.Appeal No. 54429/14, was fixed on 21/10/2015, but on mentioning and drawing the attention of this Bench that since both the appeals arise out of the common impugned order, the same are being taken up together for hearing and disposal.

2. Heard the parties.

3. The appellant is a registered dealer under Central Excise and is a manufacturer of Excavators, Backhoe Loader and Skid Steer falling under chapter sub-heading number 8429 of the schedule to the Central Excise Tariff Act, 1985. In the course of audit, it was observed that the appellants were taking credit of service tax paid by the different service Centres of the dealers and the same appears to be not admissible. Both sides agree that the issue in the present appeals is squarely covered by Final Order No.51645-51647/2015 dated 12/5/2015 passed in Appeal Nos.E/50525/14 & 59030-59031/2013.

4. As the issue in the present appeal is the same and the parties are also of the same, I allow these appeals following the earlier order of this Tribunal. The relevant paras are quoted herein below :

> "3. The facts of the case are that the appellant is manufacturer of equipments and selling these equipments through its dealers to the customers with warranty clause. During the impugned

period, the dealers were repairing equipment and charging repair charges from the appellant. The appellant has been denied input service credit on the service charges paid to the dealers by the appellant during the warranty period. The Revenue is of the view that as the warranty service has been provided after sale of the equipments, therefore, the appellant is not entitled to input service credit.

4. The issue has been settled by this Tribunal in the case of Commissioner of Central Excise, Vodadara II Vs. Danke Products - 2009 (16) STR 576 (Tri.-Ahmd.) wherein it has been held that repair and maintenance of transformers during warranty period is an activity of relating to sale of goods. Therefore, relying on the decision of the Tribunal in the case of Danke Products (supra), I hold that the appellant is entitled for input service credit on repair charges paid to the dealers by the appellant as the same is an activity relating to sale of goods by the appellant.

5. With these terms, I do not find any merit in the impugned orders and set aside the same. The appeals are allowed with consequential relief, if any. The application for extension of stay is also disposed in the above terms."

Thus, the appeals are allowed in favour of the Appellant Assessee with consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
03.11.15
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001 03.11.15