REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70890/2016-SM[BR] dated 23/09/2016

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/54735/2014	TERREX EQUIPMENTS P LTD PLOT NO. 22, UDYOG VIHAR, GREATER NOIDA, G.B. NAGAR, GREATER NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

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 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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 2

APPEAL No. E/54735/2014-EX[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/87/2014 dated 29/04/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida.)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Terex Equipments P Ltd. **Appellant**

Vs.

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

Appearance:

Shri A.P. Mathur, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 23/09/2016

FINAL ORDER NO. 70890/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Terex Equipments P Ltd., against Order-in-Appeal No. NOI/EXCUS/000/APPL/87/2014 dated 29/04/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. Brief facts of the case are that the appellant are manufacturer of Excavators, Backhoe Loader & Skid Steer. It was observed by the Revenue that appellant took credit of service tax on warranty provided by their dealers and it appeared to Revenue that the warranty provided by dealers is not input service for the manufacturer of above stated goods and therefore, Service Tax paid on warranty by providers was not admissible to the appellant as input service credit under Cenvat Credit Rules, 2004. Therefore, the appellant were issued with a Show Cause Notice dated 07-03-2013, for recovery of Cenvat credit of Rs.33,344/- for the period from April, 2012 to December, 2012. The said Show Cause Notice was adjudicated through Order-in-Original No. 18/Assistant Commissioner/Noida-IV/2013-14 dated 12-12-2013 wherein the demand was confirmed. The matter was carried before Commissioner (Appeals) who has decided the appeal through Order-in-Appeal No. NOI/EXCUS/000/APPL/87/2014 dated 29/04/2014, wherein the ld. Commissioner (Appeals) upheld the Order-in-Original dated 12-12-2013. Aggrieved by the

said Order-in-Appeal No. NOI/EXCUS/000/APPL/87/2014 dated 29/04/2014, the appellant is before this Tribunal.

3. Heard the ld. Counsel who has submitted the Final Order No. 70050-70051/2015 in Appeal No. E/55043 & 54429/2014 passed by this Tribunal in their own case on the same issue covering earlier period. The ld. D.R. has supported both impugned Order-in-Original & Order-in-Appeal.

4. I find that the said Final Order No. 70050-70051/2015 of Appeal No. E/55043 & 54429/2014 passed by this Tribunal, issued in respect of the appellant is squarely applicable in the present case. The relevant para is quoted herein below:-

> "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."

In view of the precedent decision, I allow the appeal with consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Ansari

Certified True Copy
25.10.16