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: 26/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70517/2016-EX[DB] dated 10/06/2016

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/1996/2007	**T.T.L. LTD.** PLOT NO. 6, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3Advocate(s) / Consultant(s):

BHASIN SETHI & ASSICIATE
401, SATYAM CINEMA BUILDING,
RANJEET NAGAR,
DELHI

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 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/1996/2007-EX(DB)

(Arising out of Order-in-Original No. 18/Comm./GZB/2007 dated 29/03/2007 passed by Commissioner of Central Excise, Ghaziabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
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 T.T.L. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri J.P. Kaushik, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 10/06/2016
Date of Decision : 10/06/2016

FINAL ORDER NO. 70517/2016

Per: Anil Choudhary

This appeal is filed by M/s T.T.L. Ltd. against the Order-in-Original No. 18/Comm./GZB/2007 dated 29/03/2007.

2. The issue in this appeal is whether the appellants, who have cleared their products and also rendered the commissioning and installation services vide separate contract and/or work order, are liable to pay Central Excise Duty on these charges, having already paid Service Tax on the same.

3. The brief facts are that the appellant received purchase order for supply of Electric Energy Meters from the said energy Board, Namely, Manglore Electric Supply Co. Ltd, Manglore and also from Bihar State Electricity Board, Patna, during the period from November, 2003 to December, 2003. In the case of MESC, they have issued separate installation contract for installation of 6672 number of meters, specified the labour charges for fixing of wire and commissioning including transportation of per street light. In case of BSEB, the goods were supplied and acknowledged by the BSEB and subsequently, as evident from the material receipt and handing over cum-demand authorization Voucher issued by the board, meters are

issued by the board to the appellant for installation commissioning of the same as per requirement. SCN dated 17.11.2005 was issued as it appeared to Revenue that installation and commissioning charges received from the board is includible in the assessable value and accordingly, the Excise Duty have not been made. The appellant contested the show cause notice and the same was adjudicated vide the O-I-O dated 29.03.2007, observing that from the scrutiny of the document it appears the appellant has paid Service Tax on the "Commissioning and Installation Services" during the relevant period. Further, it is observed that Central Excise Duty is leviable under Section 3 of the Central Excise Act, 1944 whereas the Service Tax is levied and collected under the provisions of Section 65(95) of the Finance Act, 1994. Section 65(95) of the Finance Act, 1994, states that "Service tax" means Tax leviable under provisions of chapter V of the Finance Act, 1994. Both the Legislative provisions are entirely independent having no bearing on each other. It is further observed that there is no provision in either of the Acts or Rules therein that if, in any certain case, Central Excise Duty is leviable then no Service Tax is chargeable or vice-versa.

4. Being aggrieved through the order of the Ld. Commissioner, the appellant is before this Tribunal.

5. The learned Counsel stated that the issue is no longer res-integra and facts are squarely covered by the Ruling of the Hon'ble Supreme Court in the case of CCE, Mumbai Vs Official Liquidator For Brimco Plastic Machinery P. Ltd.2015 (324) E.L.T. 637(SC)

wherein in fact the assessee was engaged in manufacturing excisable goods, namely, Plastic Machinery and Installation & Commissioning, Erection at factory site of their customers or buyers. Most of the components of such machinery were manufactured by appellant at their factory, a while some components were bought out from market to the factory. All such components are taken in unassembled form for the purpose of convenient transportation to site of their customers, where such machinery is assembled and installed. The assessee had been supplying the machinery in unassembled form and has been assembling and not installing at buyer's place and recovering the contract price by rising invoice.

6. The Apex Court has held that inclusion of installation erection and commissioning charges for equipment installed at customer's premises, cannot be added/included in the assessable value. Further, obvious conclusion on reading of Section 4 of the Central Excise Act, 1944 is transaction value, is to be arrived at the time of clearance of the goods from the factory. All expenses which are incurred post clearance in respect of installation, erection & commissioning, etc. cannot be taken into consideration, in the facts of the present case. The learned counsel also relies on the decision of the Division Bench of this Tribunal in the case of Ericsson India Pvt. Ltd. 2007 (7) STR 225(Tri-Chennai) wherein this Tribunal held that when the Service Tax is paid on an activity, such activity cannot be chargeable to Excise Duty or Sales Tax. Accordingly, the appeal be allowed with consequential benefits.

7. The learned AR for the Revenue relies on the impugned order.

8. We have considered the rival contentions. We hold that for the installation activity, there is separate contract between the parties, the appellant had received the installation and commissioning charges on which Service Tax has been paid by the appellant and accepted by Revenue. Accordingly, respectfully following the ruling of the Hon'ble Supreme Court in the case of Official Liquidator For Brimco Plastic Machinery (supra), we allow the appeal with consequential benefits, and impugned order is set aside.

(Dictated in Court)

-Sd- -Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
8.8
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