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

Dated: 29/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. A/ 70098-70105/2015 dated 07/12/2015</u>

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
ST/CO/276/2009,ST/CO/09, 13&12/2010	ST/655-658,751,817-818&828/2009	1. CCE,LUCKNOW 7-A, ASHOK MARG, LUCKNOW(UP)

Name and Address of Respondent

2. K.K.TELECOM
C-1753,INDIRA NAGAR
LUCKNOW(UP)

3. PARIJAT CONSTRUCTION
525 HOSPITAL ROAD
SAFDARJUNG, BARABANKI(UP)

4. S.K.CONSTRUCTION
1, STATION ROAD
SAFDARJUNG, BARABANKI(UP)

5. SURYA CONSTRUCTION CO
1360/2, VIVEKANAND NAGAR
DARRIYAPUR
SULTANPUR(UP)

6. S.K.CONSTRUCTION
1, STATION ROAD
SAFDARJUNG, BARABANKI(UP)

Other Appellants and Respondents as per Annexure

Copy To

7. <u>Advocate(s) / Consultant(s):</u> SH S.N.SRIVASTAVA,ADV
C-5, SECTOR-B
ALIGANK, LUCKNOW(UP)

8 Bar Association, CESTAT, Delhi
9 Director Publications, Customs, Excise, I.P. Estate, Delhi
10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
13 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
14 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
15 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

17 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
18 C.D.R. 19 Office Copy 20 Guard File

30/12/15

Asstt. Registrar/
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING/DECISION : 07/12/2015.

Service Tax Appeal Nos. 655-658 of 2009 with C.O. No. 276/2009, 09, 13 and 12 of 2010 and Service Tax Appeal No. 751, 817-818 and 828 of 2009

[Arising out of the Order-in-Appeal No. 113-116/ST/LKO/2009 dated 11/05/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

1.	Whether Press Reporters 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.

CCE, Lucknow — Appellant

Versus

M/s K.K. Telecom]
M/s Surya Construction]
M/s Parijat Construction]
M/s S.K. Construction] — Respondents

and

M/s K.K. Telecom]
M/s Surya Construction]
M/s Parijat Construction]
M/s S.K. Construction] — Appellants

Versus

CCE, Lucknow Respondent

Appearance

Shri A.K. Goswami, Authorized Representative (DR) – for the appellant/respondents.

Shri Dushyant Kumar, Consultant – for the Respondents/appellant.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70098-70105/2015 Dated : 07/12/2015

Per. B. Ravichandran :-

These are four appeals by the Revenue and four appeals filed by the assessees involving similar issues. All these appeals are taken up together, alongwith the cross objections filed, for disposal together. The facts of the case are that the assessees are engaged in Erection of Tele-communication towers for BSNL. Proceedings were initiated against them for non-payment of service tax against the category of Erection, Commissioning and Installation Service. The periods covered are from 01/7/2003 to 20/3/2008 in respect of three assessees – M/s K.K. Telecom, M/s Surya Construction and M/s Parijat Construction and in respect of 4th – M/s S.K. Construction from 01/7/2003 to 31/3/2007.

2. During the course of argument, the learned Counsel for the assessees Shri Dushyant Kumar submitted that they have executed

Works Contract Service for BSNL and these are not taxable prior to 01/6/2007. For the period after 01/6/2007 there is no demand against them under Works Contract Service and, as such, he pleaded for allowing their appeals setting aside the demand for service tax under ECI service.

3. The learned AR Shri Goswami, argued that from the beginning the Department contended that the assessees executed only Erection, Commissioning and Installation Service and there is no documentary evidence to show supply of materials during the course of such service. He further submitted that the lower Appellate Authority erred in allowing abatement under Notification 1/2006-ST dated 01/3/2006, as gross value of the contract has not been considered. In other words, the tower value, which is supplied free by BSNL has not been taken into account while arriving at the gross taxable value.

4. The learned Counsel for the assessees though insisted that there is supply of material, this fact requires verification of the documents as the perusal of work order and tender document indicates that the tower, primer and paints are all supplied by BSNL. Though there is mention about making civil work of foundation, as contended by the learned AR documents to show the nature of material involved and supplied in the execution of the contract is not forthcoming. The learned Counsel for the assessees states that they are being assessed by the State VAT Authorities under Works Contract Service with composition rate. However, he agreed that the value of the tower and other supplied materials of

BSNL is not included in the gross value for VAT assessment, as such, we find certain basic facts, like the actual supply of materials in the execution of contract to establish the composite nature of contract requires verification by the Original Authority. Thereafter, the latest development on the tax liability as decided by the Hon'ble Supreme Court in **CCE, Kerala vs. Larsen & Toubro Ltd.** Reported in **2015 (39) S.T.R. 913 (S.C.)** and Tribunal's order in **CCE, Lucknow vs. P.C. Construction and others** [final order No. 52176-52180/2015 dated 06/07/2015] are to be examined. Clear factual verification is to be done based on documentary evidences to be submitted by the assessees regarding nature of service and thereafter the tax liability, if any, is to be quantified.

5. In view of the above discussion and findings, we find it fit to remand these matters to the Original Authority for fresh consideration and decision preferably within three months after giving due opportunity to the assessee. The assessee shall submit all the material evidence in support of their case. The appeals by the assessee and the Revenue and the Cross Objections are disposed of with the above terms.

(Order dictated and pronounced in the open court.)

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-

(B. Ravichandran)
Member (Technical)

PK

सत्यापित प्रति / Certified True Copy
12.1.16
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