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

Final Order No. A/ 70097/2015 dated 11/12/2015

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/4153/2012	PIONEER FABRICATIONS PVT LTD B-2, SARASWATI INDUSTRIAL AREA PARTAPUR, MEERUT(UP)
	Name and Address of Respondent	CCE ,MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR MEERUT250005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH ABHISHEK JAJU,ADV
472, DELHI APARTMENT
PLOT NO 15-C, SECTROR-22
DWARKA, NEW DELHI.

4 Bar Association, CESTAT, Delhi
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 C.D.R. 15 Office Copy 16 Guard File

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 : 11/12/2015.
DATE OF DECISION: 11/12/2015.

Service Tax Appeal No. 4153 of 2012

[Arising out of the Order-In-Appeal No. 77-ST/MRT-I/2012 dated 27/08/2012 passed by The Commissioner (Appeals), Central Excise, Meerut.]

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.

M/s Pioneer Fabrications Pvt. Ltd. — Appellant

Versus

CCE, Meerut — Respondent

Appearance

Shri Abhishek Jaju, Advocate – for the appellant.

Shri A.K. Goswami, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 70097/2015 Dated : 11/12/2015

Per. B. Ravichandran :-

The present appeal is against order dated 18/09/2012 of Commissioner (Appeals), Meerut. The appellants are engaged in the manufacture of Metal Crash Barriers liable to Central Excise duty. They are also executing work of installing these Metal Crash Barriers along the highways for their customers. Proceedings were initiated against the appellant for demanding service tax under the category of erection, commissioning and installation services. After a due process, the Original Authority vide order dated 31/10/2011 confirmed a service tax demand of Rs. 16,87,775/- against the appellant and imposed equal penalty under Section 78 and also penalties under Section 77 of Finance Act, 1994. On appeal, the Commissioner (Appeals) vide the impugned order upheld the original order and rejected the appeal. Aggrieved by this, the appellant is before us.

2. The learned Counsel for the appellant Shri Abhishek Jaju submitted that the impugned order is not legally sustainable on the following main grounds :-

(a) They have executed composite work contract involving supply of materials and rendering of service while fixing the Metal Crash Barriers along the highways. These are specifically covered under works contract, not liable to service tax prior to 01/6/2007 as held by the Hon'ble Supreme Court in the case of **CCE, Kerala vs. Larsen & Toubro Ltd.** reported in **2015 (39) S.T.R. 913 (S.C.)**;

(b) The classification followed by the lower authorities is legally not sustainable. The work undertaken by them cannot be categorized as erection, commissioning or installation of any plant and machinery or structure. It is essentially a civil work having concrete foundation and Metal Barriers are fixed there upon along the road side. So the confirmation of demand under that category is not sustainable ;

(c) All the work executed by them alongside the highways and on the bridges are part and parcel of highway roads and, as such, are exempted from tax as held by the Tribunal in the case of **Phoenix Engineering vs. CCE, Nagpur** reported in **2015 (39) S.T.R. 337 (Tri. – Mumbai)** and **GMR Projects Pvt. Ltd. vs. CST, Bangalore** reported in **2014 (35) S.T.R. 785 (Tri. – Bang.)**.

3. The learned AR Shri A.K. Goswami, reiterated the findings of the lower authorities and stated that the appellants did not discharge excise duty on full value of the Metal Crash Barriers which resulted in the inquiry and there upon the confirmation of demand for service tax liability on the work executed by the appellant. He submitted that the work executed by the appellant can rightly be classified under erection, commissioning and installation services as Metal Crash Barriers can be considered as equipment and structure.

4. Heard both the sides and perused appeal records. The point for decision is the liability for service tax in respect of supply and installation

of Metal Crash Barriers along the side of highways by the appellant. On perusal of the submissions made by the appellant, we find that on all three points raised by the Counsel, they have a strong case.

5. Regarding the nature of service rendered by the appellant it is clear from the work order as well as the observations of the lower authorities that these are composite work involving supply of materials and provision of service. These are rightly to be categorized under works contract and the Hon'ble Supreme Court in the case of **CCE, Kerala vs. Larsen & Toubro Ltd.** (supra) held that prior to 01/06/2007 there is no charging Section for levying service tax on works contract. We find on this ground alone, the appellant will succeed.

6. We also find that the classification followed by the lower authorities is not sustainable. From the nature of work and the material involved it is clear that supplying and fixing Metal Crash Barriers along the highways cannot be considered as erection and commissioning of any plant and machinery or similar equipments.

7. The Metal Crash Barriers are essentially part and parcel of highways and appellant's plea that the exemption available to the construction of road will cover these structures also has much force. The manual of Specifications and Standards for National Highways, issued by Government of India, Ministry of Shipping, Road Transport & Highways

mentions Metal Beam Crash Barriers as one of the manufactured materials for use in the highways.

8. Considering the above discussions and findings, we hold the impugned order is not sustainable and accordingly allow the appeal with consequential relief, if any.

(Order dictated and pronounced in the open court).

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-

(B. Ravichandran)
Member (Technical)

PK

प्रमाणित प्रति / Certified True Copy
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