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: 10/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71052/2016-SM[BR] dated 04/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 ST/Stay/50463/2014,	ST/50359/2014	INSTRUMENT ERECTORS 7-CT-108 OBRA COLONY OBRA,SONEBHADRS AABFI3374C

Name and Address of Respondent

2 C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL LINES,
ALLAHABAD,
UTTAR PRADESH-211001

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Copy To

3 Advocate(s) / Consultant(s):

VINEET KUMAR SINGH,ADVOCATE
5 NARAIN NAGAR, SECTOR 11,
INDIRA NAGAR,
LUCKNOW,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, 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 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

23-11-16

ISSUED ON

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

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

Appeal No.ST/50359/2014-CU[SM]
WITH
STAY Application No.ST/Stay/50463/2014

Arising out of Order-in-Appeal Nos.35,36,37,38,39,40/ST/ALLD/2013 dated 16.07.2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad.

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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Instrument Erectors
...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad
...RESPONDENT (S)

APPEARANCE

Shri Vineet Kumar Singh, Advocate for the Appellant (s)
Shri R.K. Mishra, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 04.11.2016

FINAL ORDER NO.- 71052/2016

Per Mr. Anil Choudhary :

The Appellant, M/s Instrument Erectors, engaged in the business of Supply of Goods and Services and registered with the Revenue under "Maintenance and Repair Service", is in appeal against Order-in-Appeal Nos.35,36,37,38,39,40/ST/ALLD/2013 dated 16.07.2013, passed by Commissioner (Appeals) on the ground that the demand for Service Tax have been wrongly demanded without considering the supply of Goods and Material components in the service provided.

2. Heard the parties.

3. The learned counsel for the appellant has lead evidence being copy of agreements with their principal namely Executive Engineer Electrical Maintenance Division – Coal BTPS, Obra, which shows that during the period of dispute 2006-07 to 2009-10, they have supplied goods and have also rendered services. The appellant have also produced copy of their balance sheet, Profit and Loss Account as on 31.03.2007 to 31.03.2010. In the Profit and Loss Account, the appellant have shown separately the receipts from supply of goods and from providing of service. The appellant has also filed their calculation sheet as per the audited financial statements, which shows the service component for the Financial Year, 2006-07 onwards, and after allowing of threshold exemption for the supply of service, the Service Tax payable for the disputed period comes to Rs.66,211/-, against which the appellant have admittedly paid Rs.69,144/- which is also acknowledged in the show cause notice. It further appears that the Order-in-Original was passed ex parte as

the appellant failed to file reply to show cause notice, and also appear before the authority. Further, from perusal of the impugned Order-in-appeal, it is evident that a common Order-in-Appeal has been passed in respect of six different appellants, resulting in miscarriage of justice.

4. Having considered the rival contentions, I find that only some general observations have been made and the facts in particular regarding this appellant have not been discussed nor any proper opportunity given to lead evidence in support of the grounds of appeal. Accordingly, in the interest of Justice, I set aside the Order-in-Appeal and the Order-in-Original and remand the matter back to the Adjudicating Authority with the direction :- (i) to allow the benefit of material component involved in service provided, (ii) not to charge Service Tax on the supply of Goods, (iii) to allow the benefit of threshold exemption, as applicable. Thereafter, finalize the tax payable, if any, by the appellant in accordance with law. The appellant is also directed to appear before the Adjudicating Authority within a period of 45 days from the date of receipt of this order, with their representation/explanation and all evidences which they want to rely, and seek opportunity of hearing. Thus, this appeal is allowed by way of remand.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

17.11

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