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: 14/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/70810/2016-CU[DB]** dated **28/07/2016**

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/50659/2014	ST/50528/2014	**ASHISH SINGH CONTRACTOR** C-425, STREET ALPHA I , GREATER NOIDA GAUTAM BUDDH NAGAR U P
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-NOIDA C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

S. K. Pahwa,Adv
D-75, AMAR COLONY,
LAJPAT NAGAR - IV,
NEW DELHI,110024

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 /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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Stay Application No.ST/Stay/50659/2014
AND
Appeal No.ST/50528/2014- CU[DB]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/155/13-14 dated 30.07.2013, passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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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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Ashish Singh Contractor

...APPELLANT(S)

VERSUS

Commissioner of Customs & C.E. & S.T., Noida

...RESPONDENT (S)

APPEARANCE

Shri S.K. Pahwa & Shri Rohan Pahwa, Advocates the Appellant (s)
Shri D.K. Deb, Asstt. Commissioner (AR) for the Respondent(s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 28.07.2016

FINAL ORDER NO.- 70810/2016

Per Mr. ANIL CHOUDHARY :

The appellant, M/s Ashish Singh Contractor, is in appeal against the Order-in-Appeal No.NOI/EXCUS/000/APPL/155/13-14 dated 30.07.2013, passed by Commissioner (Appeals) Customs & Central Excise, Noida.

2. Brief facts of the case are that the appellant is registered under service tax having the service tax registration no APUPS6857EST001 for providing services under category "Man Power Supply", Work Contract & Maintenance & Repair Services. During the audit of the appellant it was detected that the appellant had entered into a work contract with J.P. greens & Jai Prakash Enterprises for the construction of residential complex & parts thereof & paying service tax on the entire amount except the amount received against the construction of park & road, swimming pool, treating them as part of common area of residential complex. The appellant explained the activities undertaken by them in respect of construction of roads, parks etc., were for the general public & are not part of the residential complex. Since the amenities like road parks etc. meant for general public are not chargeable to service tax, therefore the amount charged by the appellant in respect of such amenities was not leviable to service tax. This way the appellant did not pay service tax amount of Rs.30,62,770/-(including Ed. Cess & SHE Cess) on the gross value of Rs.2,66,85,478/-, collected during the period of June 2006 to March, 2011, as the construction of park,

Ar

road & swimming pool was part of the residential complex. The department examined lease deeds & other documents submitted by the appellant. It was noticed that the so called public facilities were within Jaypee Greens & were to be maintained by the Jaypee greens or the designated agency. Further, M/s Jaypee Greens had included the cost of the wall boundaries & other facilities in the cost of flat on proportionate basis. Therefore, the claim of the appellant that such facilities were for the public at large, is not acceptable. The appellant could not produce documents to substantiate their claim that these facilities were to be used by the common public. Therefore, a S.C.N. V()15Adj/Noida/Ashish/142/11/23749 dated 20.10.2011 was issued to the appellant. The adjudicating authority confirmed the demand of service tax of Rs.30,62,770/- U/s 73 of the Finance Act, 1994, along with Interest under Section 75 of the Finance Act, 1994. Being aggrieved the appellant preferred the present appeal.

3. The Ld. Advocate for the appellant, assailing the impugned order, has urged the various main grounds, which are as under:

3.1 The appellant has stated that the impugned order draws a conclusion in favour of levy of service tax on the following basis.

(i) Circular F. No. B-1/6/2005-TRU dated 27.07.2005.

(ii) Jaypee Greens project is enclosed by boundary wall with several gates.

(iii) Statement of Ashish Singh that he is not awar whether the roads and the park are for use by the general public or not and that he was verbally informed by Jaypee Greens that the roads and the park are for use by the general public.

(iv) The work order reference No.WO/JEL/08/09/ASC/185 dated 01.11.2008 indicates that the service tax is nil or as applicable shall be reimbursed on submission of challans for the amount of service tax paid under the work order.

(v) Ashish Singh produced certain copies of invoices which indicated levy of service tax which was not reimbursed by M/s Jaiprakash Enterprises Ltd.

(vi) Mr. Shaym Sunder Chaudhary in his statement mentioned that the sources of the fund for the projects of Jaypee Greens are collected from their customers and sometimes provided by their corporate office. It was also stated by him that the cost of common areas like wall, boundaries and other facilities are included in the cost of flats on proportionate basis.

(vii) M/s Jaiprakash Enterprises Ltd. have the ownership of the roads and the park.

It is not clear as to how on the basis of foregoing facts a conclusion can be drawn that the roads and the park are a part of the residential complex. In order to be a part of the residential complex it was required to be determined that Jaypee Greens project is a residential complex project in terms of the provisions of the Finance Act, 1994. Interestingly, in the entire order there is no such categorical finding. Accordingly, he prays for allowing the appeal.

4. The learned A.R. for the Revenue, relies on the impugned order.

5. Having considered the rival contentions, we find that the issues involved in this appeal is whether the roads and park are a part of a residential complex or not. This issue is settled by the various decisions of the Tribunal, High Court as also by the Apex Court. Accordingly, considering the subsequent rulings of the Hon'ble Supreme Court, particularly in the case of L & T and others Vs. CCE reported in 2015(39) STR 913. We set aside the impugned order and remand the matter to the adjudicating authority for de novo adjudication, the appellant is also directed to appear before the adjudicating authority within 45 days of receipt of this order and seek opportunity of hearing.

6. Thus, the appeal is allowed by way of remand. Stay petition is also disposed of.

(Pronounced in the open Court)

Sd/- Sd/-

(ANIL G. SHAKKARWAR) **(ANIL CHOUDHARY)**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Mishra

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD 211001