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: 05/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70750/2016-SM[BR] dated 31/08/2016

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/MISC/70335/2016	ST/51205/2015	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
		Name and Address of Respondent
2		RAJ KUMAR TYAGI SD-164, SHASTRI NAGAR,,GHAZIABAD ,U.P

Copy To

3Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.ST/51205/2015-ST[SM]

Arising out of Order-in-Appeal No.GZB/EXCUS/000/APP/220/2014-15 dated 26.11.2014 passed by Commissioner Customs, Central Excise & Service Tax Noida.

For approval and signature:

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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C.C.E. & S.T., Ghaziabad

...APPELLANT(S)

VERSUS

Raj Kumar Tyagi

...RESPONDENT (S)

APPEARANCE:

Shri Rajeev Ranjan Jt. Commissioner, (A.R.) for the Appellant
Shri Rajesh Chibber, Advocate for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 31.08.2016

FINAL ORDER NO. - 70750/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Anil G. Shakkarwar :

This appeal is filed by the Revenue against Order-in-Appeal No.GZB/EXCUS/000/APP/220/14-15 dated 26.11.2014.

2. The brief facts of the case are that the respondent was awarded with construction of 54 staff quarters by Ghaziabad Development Authority. The respondents are registered for service tax under the category of construction of residential complex. It appeared to Revenue that the construction of 54 staff quarters for Ghaziabad Development Authority during the period from 2007-08 to 2009-10 satisfied the definition of construction of residential complex. Therefore, the respondents were issued with a show-cause-notice dated 10.10.2012 demanding service tax amounting to Rs.17,16927/- under Section 73 of Finance Act, 1994 for construction of said 54 staff quarters under the category of construction of residential complex. The respondent produced copy of a certificate dated 4.12.2010 from Ghaziabad Development Authority indicating that the said 54 quarters were staff quarters. The Original Authority confirmed the demand and imposed equal penalty. The respondent preferred an appeal before Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) through his Order-in-Appeal No.220/2014-15 dated 26.11.2014, has held that the definition of residential complex under Section 65(91a) of the Finance Act, 1994, excludes – the

residential units from the levy of service tax, when the residential complex is used for self and not sold for any consideration to any prospective buyers and that the said quarters were constructed by the landowner by engaging the services of construction service provider as residential staff quarters and as clarified by CBEC, through letter F. No.332/16/2010-TRU dated 24.05.2010, the same is not liable to levy of service tax. Therefore, the Ld. Commissioner (Appeal) set aside the said Order-in-Original dated 21.02.2014. Aggrieved by the impugned Order-in-Appeal dated 26.11.2014, the Revenue is in appeal before this Tribunal.

3. The grounds of appeal, inter alia, including that the certificate dated 04.12.2010 issued by Ghaziabad Development Authority to the effect that the complex is being constructed by respondent to this appeal are 54 staff quarters does not clearly indicate as to for whom Ghaziabad Development Authority is getting them constructed whether for themselves or for any other agency. Therefore, said certificate is not concrete evidence. Further, the Revenue has raised another ground that in the case of clarification issued by CBEC dated 24.05.2010, Government of India was service receiver and Ghaziabad Development Authority is not government and the staff quarters

are whether for government staff or not on that there is no factual evidence.

4. The learned D.R. for Revenue took me through the grounds of appeal.

5. The learned counsel for the respondent has argued that it is ~~the~~ immaterial, whether the service receiver is government or not and that the finding of the appellate authority is that the residential units used for staff are not included in the definition of residential complex and that the certificate dated 04.12.2010 is ample evidence that the construction undertaken by respondent was construction as staff quarters. Therefore, the grounds raised by Revenue are not sustainable.

5. I have gone through rival contentions I do not find any merit in the grounds raised by Revenue against the Order-in-Appeal. The Revenue could not raised any ground to establish that the findings in the subject Order-in-Appeal are not sustainable. Therefore, I uphold the Order-in-Appeal dated 26.11.2014 and reject the appeal filed by the Revenue.

(Dictated & pronounced in the open Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Mishra

प्रमाणित प्रति / Certified True Copy
3/10/16
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