REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 08/08/2016

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70616/2016-CU[DB] dated 05/07/2016

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/54053/2014	ST/53631/2014	Concrete Udyog Limited Industrial Area, Bijoli JHANSI UP
			Name and Address of Respondent
2			C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR.UTTAR PRADESH- 208005

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION
LINK ROAD NEW DELHI-
110014

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

SP-54053/14
& S.T. Appeal No.53631/14

Arising out of O/O No. KNP-EXCUS-000-COM-034-13-14 dated 29.03.2014 passed by Commr. (Appeals) of Central Excise & Service Tax, Kanpur.

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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M/s Concrete Udyog Ltd. ...APPELLANT(S)

VERSUS

Commr. of C.Ex. & S.Tax, Kanpur RESPONDENT (S)

APPEARANCE

S/Shri Atul Gupta & Vaidhav Dixit, both Advs. for the Appellant (s)
Shri D.K. Deb Asstt Commr (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 05. 07. 2016

Final ORDER NO. 70616/2016

Per Mr. Anil Choudhary :

The appellant, M/s Concrete Udyog Ltd, is in appeal against the Order-in-Original No. KNP-EXCUS-000-COM-034-13-14 dated 29.03.2014 passed by Commr. of Central Excise & Service Tax, Kanpur.

2. The brief facts are that during the period of dispute June 2007 & March 2012, the appellant have done the work of clearing/ supplying laying and jointing the concrete pipes, construction of concrete cradle bedding for these pipes and other related works as a contractor for U.P. Jal Nigam and have received payment against the said work/ service. It appeared to Revenue that the said work/ service provided by the appellant falls under the category of 'Work Contract Service'. If further appeared that the service rendered by the appellant became wholly exempted from taxable service vide Notification No. 12/2012-S.T. dated 17.03.2012 as amended by Notification No 25/2012-ST, it provided exemption to Service provided to the Government or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of pipelines, conduit or plant for (i) drinking water supply (ii) water treatment (iii) sewerage treatment or disposal. Accordingly, to it further appeared to revenue that prior to the exemption Notification dated 17/03/2012 the appellant was required to pay service tax under the category of 'Work Contract Service'. Accordingly service tax amounting to Rs.3,36,90,351/- was proposed to be recovered with interest. Further, penalty was proposed under Section 76,77 & 78 of the Finance Act. The SCN was adjudicated on contest vide O/O dated 29/03/14 which is the impugned order and

the proposed demand was confirmed with interest, and further penalties under Section 76,77 and 78 were imposed along with penalty under Section 70 of the Finance Act. Being aggrieved the appellant is in appeal before this Tribunal, on the ground that the adjudicating authority have travelled beyond the scope of SCN, the appellant is not liable to pay service tax under Works Contract Service among other grounds.

3. The Ld. Counsel for the Appellant, Shri Atul Gupta points out the issue of classification and taxability was examined by the larger Bench of this Tribunal during the pendency of this appeal in the case M/s Lanco Infratech Ltd. Vs. CC, CE & S.T. vide final order dated 28/04/15, reported at 2015/TIOL/768/CESTAT/Bang./Lb. The issues for before the larger Bench were as follows:-

> "In the above circumstances, we indicated that we would hear and dispose of issues which are common, excluding the issue whether works contract was a taxable service prior to 01.06.2007. All parties identified for disposition by this Bench. Revenue does not demur. The issues presented for our consideration are:
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> Issues:
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> A) Whether laying of pipelines for lift irrigation systems, transmission and distribution of drinking water or sewerage, undertaken for Government/ Government undertakings should be classified under ECIS as erection, commission or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or installation of plumbing, drain laying or other installations for transport of fluids, enumerated in Section 65 (105) (zzd) and defined

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Section 65(39a), during 16.06.2005 to 31.05.2007; or must be classified under CICS, as amounting to construction of pipeline or conduit; and if classifiable under the later provision, whether the activity is not taxable since it is not used to or to be used, engaged or to engaged primarily for industry or commerce;

B) Whether construction of canals for irrigation purposes and laying of pipelines including as part of life irrigation systems, undertaken for the Government/ Government undertakings is liable to service tax under WCS as *turnkey projects, including engineering, procurement and construction or commissioning projects* under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined;

C) Whether, *turnkey projects, including engineering, procurement and construction or commissioning* (EPC) projects specified in clause (e) is merely an enumeration of the mode of execution of taxable services and is exigible to service tax as an independent species of works contract service;

D) Whether, even if clause (e) in Explanation (ii) of WCS is considered a distinct and independent service, where construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems or for transport and distribution of water is undertaken for Government/Government undertakings, the same is more appropriately covered under clause 9b0 of WCS, i.e. *construction of a new building or a civil structure or part thereof, or of a pipeline or conduit,* by applying principles of classification set out in Section 65A(2) (a) & (b) and thus fall outside the ambit of levy, since the activity is not primarily for the purpose of commerce or industry; or whether a contrary view that clause (e) being an independent entry, activities falling thereunder would be taxable even if the rendition of service thereby or thereunder, was not primarily for non commercial or non industrial purposes; and

E) Where execution of the whole or a part of the work is sub-contracted on back to back basis by the main contractor to the Government/ Government undertakings, whether levy of service tax in the hands of appellant (main contractor) is valid under WCS, in the light of the judgement in State of A.P. Vs. L & T Ltd **-2008-TOIL-158-VAT-SC.**"

The Ld. Counsel further points out that their work executed by the U.P. Jal Nigam falls under the category of the issue B or D stated above. The Larger Bench of the Tribunal have held that the issue B,C and D,E are overlapping and on integrating analysis have accordingly, held as follows:-

"(q) We are thus left with the activity of construction of pipelines/ conduits under the turnkey / EPC mode. When the construction is for Government/ Government undertakings and for water supply or sewerage disposal purposes, prior to 01.06.2007 this activity is classifiable under CICS and is excluded from the purview of the definition. Under clause (b) under Explanation (ii) of the definition of WCS, construction of a pipeline or a conduit primarily for the purposes of commerce or industry is an activity falling within the definition of WCS. This provision in the definition of WCS is extracted from the definition of CICS, in *pari materia.* Construction of pipeline or conduit (otherwise than under a turnkey/EPC mode), when executed for Government/ Government undertakings for transmission of water or sewerage would be outside the ambit of levy of tax, in terms of the definition itself, since this would undisputedly fall within the ambit of sub-clause (b) of WCS."

The Ld Counsel further urges that as held by the Larger Bench, their activity of construction of pipeline etc. for U.P. Jal Nigam, is not a taxable activity. He further urges that as the Ld. Commissioner did not have the benefit of the law pronounced by the Larger Bench, the matter may be remanded to the Ld. Commissioner for a fresh decision on merits, keeping in view the findings of the Larger Bench of this Tribunal.

4. Ld. A.R. for Revenue relies on the impugned order. The Ld. A.R. further agrees that the Ld. Commissioner did not have given the benefit of order of the Larger Bench and accordingly, this Tribunal may pass an appropriate orders.

5. Having considered the rival contentions, we deem it fit and proper in the interest of justice and accordingly, set aside the impugned order and remand the matter back to the Ld. Commissioner/ adjudicating authority for a denovo decision on merits after hearing the appellant and considering the law laid down by the Larger Bench in Lanco Infratech Ltd. (Supra) and other rulings. Thus, the appeal is allowed by way of remand. Stay petition also stands disposed of.

(Pronounced in the open Court)

-Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
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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