CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 21/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70131/2016 DB & STAY ORDER NO 70121/2016** dated 18/11/2015

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/S/54694/14	ST/54138/2014	SAI CONSTRUCTION & BUILDERS 2066, SECTOR 16A VASUNDHARA,GHAZIABAD
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH RAJESH CHIBER, 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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

Old Red Building , 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/decision: 18.11.2015

Stay Application No.54694/14 and
Service Tax Appeal No.54138/14

Arising out of the order in -original No.31/COMM/S.TAX/GZB/2013-14 dated 30.5.2014 passed by the Commissioner of Customs, Excise & Service Tax, Ghaziabad.

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. C.J. Mathew, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Sai Construction & Builders .. Appellant

Vs.

C.C.E., Ghaziabad .... Respondent

Appearance:

Present Shri Rajesh Chibber, Advocate for appellants
Present Shri Devendra Nagvenkar, Additional Commissioner (A.R) for the respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. C.J. Mathew, Technical member

Final Order No. 70131/2016
STAY order No. 70121/2016

Per Anil Choudhary:

The appellant, M/s Sai Construction & Builders is in appeal against the order-in-original dated 30.5.2014, by which service tax liability has been determined under the category of " Commercial or Industrial Construction service" of Rs.2,46,110/-; under Construction of Complex Service of Rs.58,02,971/- and jointly under "Construction of Complex Service" and "Commercial or Industrial Construction Service" of Rs.9,73,19,607/-. Being aggrieved, the appellant preferred have appeal amongst others the following grounds:

2. Ld. Counsel urges that vide Show Cause Notice dt. 24.4.2012 with respect to demand of Rs.9,73,19,607/-, the demand was proposed under "Commercial or Industrial Construction Service" as well as "Construction of Residential Complex". Thus the demand is sought to be set aside for uncertainty both in the show cause notice as well as in the adjudication order. Ld. Counsel further argues that they did not get proper opportunity of being heard as is evident from the record of personal hearing at para 4 of the impugned order. The last hearing was held on 20.12.2013 and the impugned order was passed on 30.5.2014, after about 5 months without any further opportunity of hearing. It is also evident from record of hearing on the previous date prior to 20.12.2013, the appellant had sought time for submission of more documents in support of their reply to show cause notice.

3. Ld. Counsel also points out from the impugned order wherein the Commissioner has recorded that he is passing the impugned order without having all the documents necessary for proper determination of the tax liability. Accordingly, he prays for setting aside the impugned order and remanding the same to the adjudicating authority so that the matter can be adjudicated de novo in accordance with law. The appellant further informs that they have deposited the admitted tax liability for the period in question amounting to Rs.67.99 lakhs.

4. Ld. A.R. for Revenue relies on the impugned order.

5. Having considered the rival contentions we find that proper opportunity of hearing was not made available to the appellant and at the same time, the adjudicating authority was also handicapped for want of necessary documents to determine the correct tax liability. In this view of the matter we set aside the impugned order with respect to demand of Rs.9,73,19,607/- & Rs.58,02,971/- and remand the case back to the adjudicating authority for de novo decision in accordance with law after hearing the appellant. We also direct the appellant to appear before the adjudicating authority with copy of all the documents and books of account on which they wish to rely in support of their contentions and seek opportunity of hearing within a period of 45 days from the date of receipt of this order. We make it clear that the demand of Rs.2,46,110/- is confirmed against the appellant. So far as the demand being already dropped, the same is not interfered with by this Tribunal. In re-adjudication, the Adjudicating Authority will also follow the

principles of law laid down by Hon'ble Supreme Court in Larson & Toubro Vs. Union of India, passed in August, 2015. Stay application also stands disposed of .

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

Sd/-
(C.J. Mathew)
Member (Technical)

SC.,

प्रमाणित प्रति / Certified True Copy
4.5.16
सहायक पंजीकार / Asstt. Registrar
38, M. G. MARG, ALLAHABAD-211001