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

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70109/2015 &STAY ORDER 70041/2015 dated 17/12/2015

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/SPS

Application	Appeal	Name and Address of Appellant
ST/S/60323/2013	ST/59636/2013	SUNIL KUMAR JAIN KJ-81, KAVI NAGAR GHAZIABAD(UP)

Name and Address of Respondent	CCE, GHAZIABAD 202 WING A CGO COMPLEX -II, KAMLA NEHRU NAGAR GHAZIABAD

Other Appellants and Respondents as per Annexure

Copy To

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

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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/SPS
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING/DECISION : 17/12/2015.

Service Tax Stay Application No. 60323 of 2013 in Appeal No. 59636 of 2013

[Arising out of the Order-In-Appeal No. 85-86/ST/GZB/2013 dated 15/05/2013 passed by The Commissioner (Appeals), Central Excise, Ghaziabad.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: Seen
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes. ~~Seen~~
3.	Whether their Lordships wish to see the fair copy of the order?	: Seen.
4.	Whether order is to be circulated to the Department Authorities?	: Yes

M/s Sunil Kumar Jain — Appellant

Versus

CCE, Ghaziabad — Respondent

Appearance

Shri Rajesh Chhibber, Advocate – for the appellants.

Shri D.K. Sinha, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70109/2015 Dated : 17/12/2015
STAY/ORDER No 70041/2015

Per. Anil Choudhary :-

Heard the parties. The issue involved in this appeal is regarding taxability of receipts by the appellant - contractor for construction of single storey houses for Greater Noida Industrial Development Authority. The appellant had undertaken the work in 2007-2008 and were under the impression that no service tax is leviable as clarified by the principle - Greater Noida Authority (for short). On being so advised the appellant took registration in the year 2008 under the category 'Commercial and Industrial Construction Service' (CICS). On being noticed from the Service Tax Department for payment of service tax, the Greater Noida Authority calculated the service tax under the category of 'works contract' and accordingly calculated the amount of tax Rs. 13,97,524/- and the said amount was accordingly disbursed and deposited to the Revenue on 07/1/2009, as is evident from the order-in-original. The learned Counsel for the appellant have contested the demand on the ground that show cause notice was issued under CICS category whereas the tax have been imposed vide order-in-original under 'construction of residential complex service'. He further informed that now the issue is settled by the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. vs. Union of India** reported in **2015 - TIOL - 187 - SC - ST**, wherein it has been held that no service tax is exigible were there is a composite contract involving both service and material elements prior to 01/6/2007 when works contract was brought on statute as a taxable category. Accordingly, the learned Counsel pleads that the matter needs to be remanded as the law is clarified by the Apex Court for the re-calculation of the tax liability. More so, in view of the fact that tax have been levied for some period in the present impugned order for the period prior to 01/6/2007, which is not exigible. He further prays that in view of the law being unsettled at that time and highly litigated as to works contract, there have been no case of deliberate default or contumacious conduct on the part of the appellant, which is evident from the impugned order, no penalty is imposable and the penalties imposed are fit to be set aside.

2. The learned AR for Revenue supports the impugned order in view of the law pronounced by the Apex Court he said that the matter may be remanded for re-calculation.

3. Having considered the rival contentions, we hold that the appropriate classification in the case of appellants is 'works contract' service. Accordingly, we remand the matter to the Adjudicating Authority to re-determine the tax liability under works contract service with composition scheme as opted by the appellant, in view of the law pronounced by the Apex court in the case of **Larsen & Toubro Ltd.** (supra). In the fact and circumstances, we find that there are no deliberate latches in compliance on the part of the appellant who had taken effective steps and deposited the admitted tax prior to passing of

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the order-in-original. In this view of the matter, we set aside the penalties imposed. Thus, the appeal is remanded for re-calculation of the tax liability in accordance with law. The stay application is also disposed of.

(Order dictated and pronounced in the open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK

Certified True Copy
19.1.16
Asstt. Registrar