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: 07/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70852/2017-CU[DB] dated 27/04/2017

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/1014/2010	**MONIKA TELECOM PIPES PVT LTD** Bhopa road, Muzaffarnagar(UP)
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Copy To

3Advocate(s) / Consultant(s):

Aalok Arora, Advocate
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/1014/2010-CU[DB]

(Arising out of Order-in-Appeal No. 284-285-CE/MRT-I/2009-10 dated 30/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Monika Telecom Pipes Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Aalok Arora, Advocate, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 27/04/2017

FINAL ORDER NO. 70852/2017..........

Per: Anil Choudhary

The issue in this appeal is, whether laying of 'Optical Fibre Cable' alongside or under the roads for telecom service providers, whether the same is classifiable under "Erection, Commissioning & Installation Services" as defined under Section 65(39a) of the Finance Act, 1994 and whether under the facts and circumstances, extended period of limitation have been rightly invoked.

2. The brief facts of the case are that Show Cause Notice dated 26/03/2009 was issued, for the extended period 2005-06 & 2006-07. During audit, on scrutiny of balance sheets

other documents, it appeared that appellant have received OFC Cable laying charges during the said period. Accordingly, Service tax was demanded on the said work of laying of OFC beneath the earth as per contract or requirement of the customers and/or client of the appellant. The Show Cause Notice was adjudicated on contest and the proposed demand confirmed with interest and penalty was imposed under Section 78 of Finance Act, 1994. Revenue also filed appeal for non-imposition of penalty under Section 76 of the Act along with Section 77 of Finance Act, 1994. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) challenging the levy of duty and also imposition of penalty. The ld. Commissioner (Appeals) was pleased to allow the appeal of Revenue, imposing penalty under Section 76, 77 & 78 of Finance Act, 1994 and dismissed the appeal of the appellant-assessee.

3. Being aggrieved the appellant is before this Tribunal. The ld. counsel urges that the said work of laying cable as explained by CBEC Circular No. 123/5/2010-TRU, dated 24th May, 2010 is exempt from the levy of service tax. Under similar facts and circumstances, the said Circular was relied by Coordinate Bench of this Tribunal in the case of H. M. Satyanarayan *Versus* Commissioner of Central Excise, Nagpur reported at 2016(42) S.T.R. 397 (Tri. – Mumbai), wherein for laying of 'optical fibre cables' alongside or under the roads for telecom service providers, it was held that the

aforementioned Circular dated 24th May, 2010, is squarely applicable in the case.

4. Heard ld. A. R. for revenue who supported the impugned order.

5. Having considered the rival contentions and on perusal of the facts on record, we find that the issue herein, is squarely covered by the CBEC Circular dated 24/05/2010 and accordingly, we find that it has been clarified that laying of cables alongside or under the roads for telecom service providers is not a taxable service under any Clause of Sub-section (105) of Section 65 of the Finance Act, 1994. We also hold that laying of pipe lines for the purpose of laying of OFC is not a separate work and is exempt within the meaning of the aforementioned circular. Accordingly the appeal is allowed. The impugned order is set aside the appellant shall be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy
14/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
...एम. जी. मार्ग, इलाहाबाद-211001
...G MARG ALLAHABAD...