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: 21/09/2017

To

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

Final Order No. A/71130/2017-SM[BR] dated 18/09/2017

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/1449/2011	**Aayushi Construction Co** C/o Bhagat Sanjeev Kumar & Co., (C.A) Hotel President Compound, Golghar, GORAKHPUR U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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

**Ravi kumar Bhagat (Rep.)
214-A, Rajmandir plaza, near
surya residency, vesu, Bhimrad,
Surat, Gujrat-395007**

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

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

APPEAL No.ST/1449/2011-ST[SM]

(Arising out of Order-in-Original No. 5/COMMR./LKO/ST/2011 dated 08/07/2011 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Aayushi Construction Co. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Ravi Kumar Bhagat, Representative for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 18/09/2017
Date of Decision : 18/09/2017

FINAL ORDER NO-71130/2017............

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary

The issue in this appeal is whether the appellant is liable to pay service tax for the work done, being composite contract of labour and material for the period from 2004-05 to 2008-09 under the 'Construction Service', as defined in Section 65 (30a) of the Act.

2. As per the show cause notice dated 23/04/2010, it appeared to revenue that the appellant was engaged in providing 'Construction Service', particularly to M/s Bharat Petroleum Corporation Ltd. (for short BPCL), Lucknow. As per the information received from M/s

BPCL vide letter dated 20/04/2009 it was ascertained that the appellant have constructed petrol bunks, canopies etc. of retail outlets of M/s BPCL. Accordingly, for the gross payments received during the period in question, service tax Rs.55,45,341/- was demanded and further penalties were also proposed. Vide the impugned Order-in-Original, the learned Commissioner was pleased to allow abatement for the material component being 67% and thereafter, confirmed a reduced amount of service tax at Rs.18,29,963/-. Thus, dropped the balance proposed demand of Rs.37,15,378/- and further imposed penalties under Sections 78, 77(1)(a), 77(1)(c) and Section 71 of the Finance Act.

3. The authorized representative of the appellant states that under the admitted facts that they have executed composite contract involving both material and labour, the same is classifiable under works contract service, brought on statute with effect from 01/06/2007. It is further stated that pursuant to introduction of works contract with effect from 1st June, 2007, the appellant have obtained registration and paid the applicable taxes and filed the returns.

4. Heard learned A.R. for revenue who supports the impugned order.

5. Having considered the rival contentions, I find that the law have been clarified by the Hon'ble Supreme Court in the case of Union of India Vs Larsen and Toubro reported at 2015 (39) STR 913 (SC) decided on 20th August, 2015 wherein the Hon'ble Supreme Court have held that no service tax is excisable in the case of composite contract prior to 01/06/2007. I further find that there is no alternative proposal in the show cause notice to classify the service involved herein under 'works contract'. In this view of the matter, the show cause notice is bad and not maintainable.

6. Under the admitted fact that the appellant have obtained registration and paid service tax under 'works contract' with effect from 1st June, 2007 the service tax for the period from 01/06/2007 is hereby confirmed. Accordingly, the impugned order is set aside in part, as regards demand prior to 01.06.2007. Under the facts and circumstances, all penalties imposed are set aside and appeal is allowed in part.

(Dictated in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति/Certified True Copy
04/10/17
Asstt. Registrar
C.E.S.T.A.T.
211001
M. G. MARG, ALLAHABAD-211001

akp