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: 03/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71295-71296/2017-CU[DB] dated 27/09/2017

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/56/2010	**Commissioner of CUSTOMS-Meerut-ii** OPPOSITE SHAHEED SMARAK, DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH
2	ST/125/2010	**AKRATI PROMOTERS & DEVELOPERS,** CS-1-3, RASHMI PLACE, BYE PASS ROAD, KAMLA NAGAR, SULTHAN GANJ CROSSING, AGRA-282005.
		Name and Address of Respondent
3		Akrati Promoters & Developers Shiv Market,mahaveer Ganj,haldwani,, NAINITAL ,UTTARAKHAND
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi
110091

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Cemax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL No. ST/56/ & 125/2010-CU[DB]

(Arising out of Order-in-Appeal No. 266-ST/MRT-II/2009 dated 23/10/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-II)

C.C.E. & S. T., - Meerut-II (In Appeal No. ST/56/2010) &

M/s Akrati Promoters & Developers, (In Appeal No. ST/125/2010)

Assessee

Vs.

M/s Akrati Promoters & Developers, (In Appeal No. ST/56/2010) &
C.C.E. & S. T., - Meerut-II (In Appeal No. ST/125/2010) Revenue

Appearance:

Shri Sandeep Kumar Singh, Deputy Commissioner (AR) for Revenue
Shri R. Krishnan, Advocate, for Assessee

CORAM:

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

Date of Hearing & Date of Decision : 27/09/2017

FINAL ORDER NO..71295-71296/2017

Per: Anil Choudhary

The issue in these appeals, with cross appeals, is, whether the appellant is liable to pay Service Tax for the period 2nd February, 2007 to 31st May, 2007, when admittedly the work done by them qualified under the category of "works contracts."

2. The brief facts of the case are that the appellant is engaged in civil construction and they have done work for Indian Oil Corporation. The learned Counsel has pointed out from the tender document, wherein, under the head nature and scope of work, it is mentioned – the scope of work

generally comprises of but not limited to construction of civil and structural work at the project site and further provides in clause 14 that all materials including cement, reinforcement, structural steel, consumables etc. shall be supplied by the appellant–contractor. The learned Counsel states that although the courts below framed the issue whether the service provided by the appellant is classifiable under "commercial and industrial construction" service or "works contract" service but the courts below have wrongly classified the service under "commercial and industrial construction" service. The learned Counsel states that the issue is no longer *res-integra* and will have to be decided in the facts of the given case by Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. Versus Union of India reported at 2015 (39) STR 913, wherein it has been held that a composite contract cannot be bifurcated prior to 01/06/2007 when works contract classification was brought on the statute. Accordingly, he prays for allowing the appeal, deleting the demand raised for the period prior to 01/06/2007, as admittedly the appellant has *suo-moto* taken registration under the works contract classification with effect from 01/06/2007 and paid the taxes.

3. The learned A. R. for Revenue has relied on the impugned order.

4. We find that the issue, herein, is squarely covered by the ruling in the case of Larsen & Toubro Ltd. Versus Union

of India (supra) of the Apex Court. Accordingly, we set aside the impugned order to the extent, it has demanded tax under "commercial and industrial construction" service for the period February, 2007 to May, 2007. Further, although the demand of service tax for the balance period is also improper under the classification commercial and industrial construction service but we uphold the levy of tax as appellant have *suo-moto* taken registration under classification of works contract and paid the taxes. Accordingly, we set aside all the penalties imposed on the appellants. There will also be no levy towards interest. We further direct the Adjudicating Authority to adjust the taxes paid by the appellant under works contract service. If any taxes are found to be paid in excess, the same shall be refundable, and if there is any Revenue deficit, the appellant shall make good, the same. Under the facts and circumstances and the findings hereinabove, we dismiss the appeal filed by the Revenue.

5. To sum up, Appeal of Revenue No. ST/56/2010 is dismissed & Appeal by Assessee No. ST/125/2010 allowed.

(Dictated & Pronounced in Court)

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

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

Ansari

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