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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/11/2017

To

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

Final Order No. ST/A/71730/2017-CU[DB] dated 28/11/2017

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/Stay/409/2010	ST/251/2010	BAJAJ HINDUSTAN LTD. Palia Kalan Distt. Lakhimpur Kheri (U.P.)
			Name and Address of Respondent
2			-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

Ms Stuti Saggi (Adv.) (ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

DATE OF HEARING & DECISION : 28.11.2017

S. T. Appeal No. 251/2010
(Arising out of order-in-appeal No. 224-ST/LKO/2009 dated 25.11.2009 passed by the Commissioner (Appeals), Central Excise, Lucknow).

M/s Bajaj Hindustan Limited Appellant

Vs.

CCE, Lucknow Respondent

APPEARANCE

Ms. Stuti Saggi, Advocate for the Appellant
Shri Mohd. Altaf, Asstt. Commissioner (D.R.) for the Department

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar (Technical)

Final Order No. 71730/2017

Per Ms. Archana Wadhwa :

After hearing both the sides duly represented by Ms. Stuti Saggi, ld. Advocate for the appellant and Sh. Mohd. Altaf, ld. DR for the Revenue, we find that the appellant entered into an agreement with M/s Shree Radha Krishna Alloys Pvt. Limited for ~~rendering~~ Renting of land to them as also for supply of the machines, plant and equipment. The said agreement was entered into w.e.f. 13.12.2004.

2. Revenue by entertaining a view that the appellant has rendered 'support services of business or commerce' to the said M/s Shree Radha Krishna Alloys Pvt. Limited initiated proceedings

against them for confirmation of service tax to the tune of Rs.5,86,410/- and also for imposition of penalty by way of issuance of show cause notice dated 15.10.2007 by invoking the longer period. The said notice culminated into an order passed by the authorities below and upheld by the Commissioner (Appeals). Hence the present appeal.

3. The contention of the appellant is that by providing land as also plant and machinery on rent basis, the services cannot be held to be falling in the category of business support services inasmuch as they have simplicitor rented the land and plant and machinery. Renting of ~~plant~~ land would fall under the category of 'renting of immovable property', which came into existence w.e.f. 01.06.2007 and they have already paid the service tax under the said category from the date of introduction of the said service in the statute book and the Revenue has accepted the same without any objection. As regards the supply of plant and machinery, ld. Advocate for the assessee submits that the same would fall under the category of supply of tangible goods, which was introduced in the tax liability w.e.f. 16.05.2008. She submits that by ~~any~~ no stretch of imagination their activity falls under the category of 'support service of business or commerce'.

4. Ld. AR for the Revenue reiterated the finding of the lower authorities and specifically draws our attention to the explanation appearing under the definition of the 'support services of business

or commerce', appearing under Clause (104c) of Section 65 of the Act.

5. We have considered the submissions made by both the sides. We note that the agreement entered between the appellant and M/s Shree Radha Krishna Alloys Pvt. Limited was for renting of land and for supply of the plant and equipment and M/s Shree Radha Krishna Alloys Pvt. Limited started their business activities after entering into the said contract with the appellant. As such, the facts lead to the conclusion that the services undertaken by the appellant would fall under the category of renting of immovable property and supply of tangible goods. The explanation appearing under the definition of support services of business refers to altogether different circumstances wherein infrastructure is provided alongwith the office and other common utility to a person who is conducting his business from that place. The activity of renting of land and renting of plant and machinery cannot fall under the said explanation so as to ~~recover~~ be covered by the definition of 'support services of business or commerce'.

6. In view of the above, we find no merit in the revenue stand. Accordingly, the impugned order is set aside and ~~allows~~ allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in the open Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Pant

सत्यापित प्रति/Certified True Copy
02/01/18
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001