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: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71869-71870/2017-CU[DB] dated 01/12/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 81(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/690/2010	R C Engg Works P Ltd B-3,bs Road,indl. Area GHAZIABAD UP
	ST/1358/2010	GURUDEV ENGG. WORKS, JANSATH ROAD, KHATAULI MUZAFFARNAGAR (UP)
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202,,,WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
3		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS
ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD
UTTARPRADESH
201002

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax 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 Nos. ST/690 & 1338/2010-CU(DB)

(Arising out of Order-in-Appeal No. 19-CE/GZB/2010 dated 22/02/2010 (in Appeal No. ST/690/2010) & Order-in-Appeal No. 74-CE/MRT-I/2010 dated 31/05/2010 (in Appeal No. ST/1338/2010) passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Ghaziabad/Meerut)

M/s R.C. Engg. Works. P. Ltd. (in Appeal No. ST/690/2010) &

M/s Gurdev Engg. Works (in Appeal No. ST/1338/2010) **Appellant(s)**

Vs.

Commissioner of Central Excise, Ghaziabad (in Appeal No. ST/690/2010) &

Commissioner of Central Excise, Meerut-I (in Appeal No. ST/1338/3010)

Respondent(s)

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant(s)
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent(s)

CORAM:

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

Date of Hearing : 01/12/2017
Date of Decision : 01/12/2017

FINAL ORDER NOs...71969...71970/2017

Per: Archana Wadhwa

As the issue involved in both the appeals is identical, the same are being disposed of by common order.

2. After hearing the both sides, we find that the appellant is manufacturer of sugar mills parts. They are also receiving old and worn out Sugar Mill Rollers from other sugar mills for

the purpose of re-conditioning. Revenue raised the demand of service tax on the ground that the re-conditioning is covered under the "Maintenance and Repair Services" and they liable to service tax. The demands were raised by invoking the longer period of limitations in both the case and the period involved in both cases is prior to June, 2006 and a part of the demand is subsequent to the said date.

3. The contention raised by the learned advocate appearing on behalf of both appellants is that re-conditioning was introduced in the "Maintenance and Repairs Services" with effect from 16.06.2005 and as such the activity undertaken by them prior to the said date would not fall under the category of the said services. Though the learned advocate fairly agrees that a part of the demand is subsequent to 16.06.2005 but assails the same on the point of limitation. For the above proposition, reliance is placed upon Tribunal's decision in the case of Jagat Machinery Pvt. Ltd. vs. Commissioner reported at 2013 (32) STR 663 (Tribunal Delhi).

4. We find that an indentical issue was the subject matter of the said decision of the Tribunal, wherein it stands held that the activity of re-conditioning of old and worn out shells of Sugar Mills Rollers, shall be liable to service tax only with effect from 16.06.2005. The Tribunal also dealt with the issue of limitation and held that inasmuch as the appellant was

reflecting everything in their returns filed with the Revenue, no malafide can be attributed to them. As the issue involved in the case of Jagat Machinery decision's of the Tribunal is indentical to the issue involved in the present case, the ratio of the said decision is fully applicable to the present dispute.

5. By following the same, we hold that the activity of re-conditioning of old and worn out sugar mills rollers would not be taxable prior to 16.06.2005. As regards limitations, we note that the appellant is an excisable unit and was filing returns under the Excise Act. In the said returns they have reflected the excisable goods as also not excisable goods. The re-conditioned shells were being shown by them as non excisable items. As such it can be safely concluded that the entire facts were being placed by the appellant before their Jurisdictional Central Excise Authorities, in which case no malafide can be attributed to them so as to invoke the longer period of limitation. In view of the foregoing discussions, we set aside the impugned orders and allow both the appeals on merits as also on limitation.

(Dictated and pronounced in Court)

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

Sd/-
(Archana Wadhawa)
Member (Judicial)

प्रमाणित प्रति/Certified True Copy

05/01/18

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