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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70188/2017-CU[DB] dated 01/02/2017

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/705/2009	**Saraswati Traders** 15,laxmanpuri,faizabad Road LUCKNOW UP
		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):

DUSHYANT KUMAR
19/849 INDIRA NAGAR
LUCKNOW 226016

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.ST/705/2009-EX[DB]

Arising out of Order-in-Appeal No.110-112-ST/LKO/2008 dated 11.05.2006 passed by Commissioner (Appeals) Customs, Central Excise & S. Tax, Lucknow.

M/s Saraswati Traders

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.T., Lucknow

...RESPONDENT (S)

APPEARANCE

Shri Dushyant Kumar, Consultant for the Appellant (s)
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT: 01.02.2017

FINAL ORDER NO.- 70188/2017

Per Mr. Anil Choudhary :

The issue in this appeal is, whether the appellant who have done the Erection and commissioning of towers for BSNL, wherein they also used some materials like Sand, bricks, rods, steel, mortor, paint etc. whether they are liable to service tax under the category 'Erection, Commissioning and Installation Service' under Section 65 of the Finance Act or whether the work or service performed by them is classifiable under the Head 'Works Contract' and accordingly they are not liable to Service Tax for any work done prior to 01.06.2007 and subsequently they are not liable as there is no proposal in the SCN to levy tax under the Head 'works contract'.

2. Admittedly, the appellant is registered under the provisions of Sales Tax also having Tin No.09152303397 with the Sales Tax Authority at Lucknow. It is further evident from the copy of invoice produced in the course of hearing that the appellant have also billed BSNL for cost of laying of PCC, providing, bending, fixing and placing cold twisted bars, providing and laying of cement and concrete mixture for slab, beam and column base, brick work for shuttering and centering etc. Admittedly, the appellant have used materials in the execution of their work done for BSNL. According to the Order-in-Original, the appellant had made a specific claim in response to the show-cause notice that they have also utilised materials in the execution of the work for BSNL, and BSNL have only provided tower steel (in folding condition) along with its nuts and bolts. The appellant have also categorically stated the value of material used by them in that the execution of the works contract during the relevant period, totaling Rs.99,02,236. It have been further noticed that there is no proposal in the show-cause-notice for levy of tax under the category of works contract.

3. Heard the parties.

4. In view of the ruling of Hon'ble Supreme Court in the case of Larsen and Toubro Ltd., reported at 2015 (39) S.T.R 913 (SC) wherein it have been laid down that in any execution of work wherein materials have been supplied and used in the execution of the work, it will be classifiable under 'works contract' service only. It has been further held by the Apex court that no Service Tax is eligible prior to

01.06.2007 under the Heading 'Works Contract' or under any other category of service, for 'works contract', as it existed then. Accordingly, we hold that the appellant is not liable to pay service tax under the category of ECIS prior to 01.06.2007. So far the work done after 01.06.2007, although we find that the same is taxable under the normal circumstances under the category of 'works contract' but in absence of any proposal in the show cause notice to tax the work alternatively under 'works contract' service, we hold that the appellant under the facts and circumstances is not liable to pay Service Tax in response to show-cause-notice in question. Accordingly, we set aside the impugned order and appeal is allowed. The appellant is entitled to consequential benefits, if any.

(Dictated and Pronounced in the open Court)

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

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

Mishra

प्रमाणित प्रति / Certified True Copy
22/02/17

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