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: 29/06/2017

To

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

Final Order No. ST/A/70588/2017-CU[DB] dated 20/06/2017

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/52077/2014	ST/51714/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
			Name and Address of Respondent
2			Anwar Electricals Vil-pokher, Bhitwa,P.o Tetri Bazar, SIDDHARTH NAGAR ,UTTAR PRADESH

Copy To

3 Bar Association, CESTAT, Allahabad

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

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

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

APPEAL No.ST/51714/2014-CU[DB]
With ST/Stay/52077/2014

(Arising out of Order-in-Appeal No. 108/ST/ALLD/2013 dated 07/11/2013 passed by Commissioner of Central Excise & Customs (Appeals). Allahabad)

Commissioner of Customs, C.E. & S.T., Allahabad **Appellant**

Vs.

M/s Anwar Electricals **Respondent**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Appellant
None. for Respondent

CORAM:

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

Date of Hearing : 20/06/2017
Date of Decision : 20/06/2017

FINAL ORDER NO- 70588/2017.........

Per: Anil Choudhary

The present appeal is filed by the revenue against Order-in-Appeal No. 108/ST/ALLD/2013 dated 07/11/2013 passed by Commissioner of Central Excise & Customs (Appeals). Allahabad.

2. The revenue is in appeal against order of the Commissioner (Appeals), wherein it has been held that the respondent-assessee is a manufacturer and repairer of Transformers, is not liable to pay service tax on the material components used in the repair of

Transformers which has been separately billed, in the bills and further Sales Tax/VAT have been paid.

3. The brief facts of the case are that the respondent was a manufacturer and repairer of Transformers. Executes work mostly under contract with various Electricity Boards and other customers. They were paying service tax under the heading of 'Management, Maintenance or Repair Service' on the labour component and where admittedly paying Sales Tax/VAT on the material component used in the repair of the Transformers. It appeared to Revenue that the respondent-assessee should also pay service tax on the material component, as service tax is payable on the gross amount received or charged by the service provider.

4. In the Order-in-Original, the Joint Commissioner have been pleased to drop the proceedings, taking notice of the facts and also Notification No.12/2003–ST dated 20/06/2003, which exempts from the gross charges so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under Section 66 of the Finance Act, subject to condition that there is documentary proof, specifically indicating the value of the said goods and materials. It was also taken notice that the value of items supplied to Purvanchal Vidyut Vitran Nigam Ltd. (PVVNL), is shown in invoices separately, which is also an admitted fact in the

SCN and further the assessee also paid Sales Tax/VAT under the State Sales Tax Act on such value of materials. Thus, the respondent-assessee fulfils the conditions under the said Notification No.12/2003, and as such the value of materials is not exigible to service tax. The contentions are also supported by the certificate of Chartered Accountant and it was also noticed that the cost of materials/goods were separately shown in the invoices.

5. Being aggrieved, revenue had preferred appeal before learned Commissioner (Appeals) and the Commissioner (Appeals), after examining the issue in details was pleased to uphold the Order-in-Original relying on the ruling of Hon'ble Supreme Court in the case of BSNL & Anr. Vs Union of India reported at 2006 (2) STR 161 (S.C.-L.B.) wherein it have been clarified that Article 366 (29A), specially provides a legal fiction in respect of works contract, where the word 'contracts' can be divided into two components, that is service portion and sale of goods portion. In the instant case, as far as the sale of goods portion is concerned, it is very clear that VAT or Sales Tax has already been discharged. Thus, the respondent-assessee cannot be asked to pay service tax on the value of the materials.

6. Heard the learned A.R. for the revenue, who has supported the grounds of appeal. The respondent-assessee is absent. As the issue is covered by the precedent ruling of this Tribunal ruling of the Hon'ble Supreme Court, appeal is taken up for disposal.

7. Having considered the rival contentions, we find ourselves in agreement with the findings of the learned Commissioner (Appeals) that no service tax can be demanded on the material component, used in the repair of Transformers, wherein the invoices, material have been separately charged and Sales Tax/VAT have been paid on the same. We also hold that Sales Tax and Service Tax are mutually exclusive.

8. Accordingly, we dismiss this appeal filed by revenue. The stay application is also disposed of.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Cerified True Copy
27/07/2017
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