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: 26/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70517-70518/2017-CU[DB] dated 26/04/2017

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/51697/2015	ST/52701/2015	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
2		ST/70032/2015	**Ashok Tiwari** 6,kavalyadham Colony, Durga Kund VANARASI U.P.
			Name and Address of Respondent
3			C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
4			Ashok Kumar Tiwari 6, Kavalyadham Colony, Durgakund,,, VARANASI ,U.P221010

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

PUNIT KUMAR UPADHAYA
ADVOCATE
D-403 SANGAM LINK
APARTMENT BAGHAMBARI
GADDI ALLAHPUR ALLAHABAD

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, 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 Guard File

Asstt. Registrar

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

APPEAL No. ST/70032 & 52701/2015-CU[DB] With
STAY Application No. : ST/Stay/51697/2015

(Arising out of Order-in-Appeal No. 14/ST/ALLD/2015 dated 11/02/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Ashok Kumar Tiwari (in Appeal No.ST/70032/2015), C.C. & C.E. & S.T.-Allahabad (in Appeal No. ST/52701/2015)

Appellants

Vs.

C.C. & C.E. & S.T.-Allahabad (in Appeal No. ST/70032/2015), Ashok Kumar Tiwari (in Appeal No.ST/52701/2015),

Respondents

<u>Appearance:</u>

Shri Punit Kumar Upadhyay (Advocate)	for Assessee
Shri Pawan Kumar Singh (Supdt.) AR	for Revenue

<u>CORAM:</u>

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

Date of Hearing	:	26/04/2017
Date of Decision	:	26/04/2017

FINAL ORDER NO.....70519-70518/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary:

These cross appeals by the Assessee and the Revenue arises, from Order-in-Appeal dated 11 February, 2015, passed by the Commissioner (Appeals) Customs Central Excise and Service Tax Allahabad.

2. Heard the parties.

AN

3. We find that as per the grounds of appeal by the Assessee they are agitating levy of service tax prior to 1st June 2007 under the head maintenance and repair on the ground that for the subsequent period i.e. after 1st June, 2007, The Learned Commissioner have held that the Assessee is doing works contract and accordingly the work is not classifiable under maintenance and repair after 1st June, 2007. The learned Counsel for the assessee urges that there cannot be two classification for the same work prior to 1st June, 2007 and subsequent from 1st June, 2007, in view of the judgment of Hon'ble Supreme Court in the case of Commissioner, Central Excise & Customs, Kerala v/s Larsen & Toubro Ltd 2015 LawSuit (SC) 768. The learned counsel further urges that from the works order on record it is evident that the nature of work ~~of~~ is fabrication and repairs with material component and as such the Learned Commissioner (Appeals) have erred in holding and classifying the said work under 'maintenance and repair' to 1st June 2007.

4. In the appeal by Revenue the ground is that the learned Commissioner (Appeals) have erred in classifying the work done after 1st June 2007 under 'works contract' and the same should have been classified under 'maintenance and repair' only for the said period, as held by him for the prior period.

5. Considering the rival submissions and on examining the facts on the record, we find that it is admitted fact that appellants have also used and supplied materials in execution of the work allotted by Railways, which is in the nature of- replacement of moistures

separator in shop, engine erection and test shop, HTS and tool rooms etc., wherein the list of materials is given along with quantity and unit rate. Further the work order/letter of acceptance gives the details of material component and labour component. Further the payment terms provide 80% payment on 'material supply' and balance on completion of the work. Further the condition provide (taxes and duties)- U.P. Trade Tax @ 4% on supply portion and Income tax plus surcharge on the total contract value shall be deducted at source from the bills. Thus, it is evident that the said deemed supply of materials in the execution of the works of contract has also been subjected to payment of sales tax/VAT. In this view of the matter we hold the work prior to 1st June, 2007 is also classifiable under the classification ~~under the~~ of works contract as defined under Section 65(105) (zzm) of the Finance Act. We further find from the definition of the works contract in the Finance Act that the said definition excludes work in respect of Railways. Further we find that Section 2(31) of the Railways Act, 1989 defines, "Railway means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

(a) All lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) All lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) All electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) All rolling stock, stations, offices warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;"

5. From the aforesaid definition we find that Diesel Locomotive Works Varanasi being a manufacturing facility of the railways or Indian Railway is also includable in the definition of railway as per definition hereinabove. Accordingly we hold that the work done by the appellant for DLW is exempt under the definition of works contract under the Finance Act. Accordingly we find that the show cause notice is unsustainable, accordingly set aside the impugned demands. The appellant shall be entitled to consequential benefits in accordance with law. The appeal by Revenue is dismissed. The Stay Application also stands disposed of.

(Dictated and pronounced in Court)

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

Ankit

प्रमाणित प्रति/Certified True Copy
14/06/2017
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