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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70112/2017-CU[DB] dated 23/01/2017

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/57472/2013	**Terex Equipments P Ltd** Plot No-22,udyog Vihar,greater Noida G.B.NAGAR U.P
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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
COURT NO. : 1

Appeal No. : ST/57472/2013-CU[DB]

Arising out of O/O No. 57/Commisioner/Noida/2012-13 dated 12.0.2013 passed by Commissioner of Customs & Central Excise, Noida.

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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M/s Terex Equipments P Ltd.

...APPELLANT(S)

Vs.

Commissioner of Central Excise & Service Tax, Noida. ...RESPONDENT(S)

APPEARANCE:

Shri Rajesh Chibber, Advocate for the Appellant(s)
Shri Rajiv Ranjan, Joint Commissioner (AR) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 01. 09. 2016

Final ORDER NO. 70112/2017

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Anil Choudhary :

The appellant, M/s Terex Equipments P Ltd., is in appeal against the impugned Order-in-Original No. 57/Commisioner/Noida/2012-13 dated 12.0.2013 passed by Commissioner of Customs & Central Excise, Noida.

2. Heard the parties.

3. The admitted facts are that the appellant has booked the remittance of royalty in their books of accounts towards payment to be made to their associates. In the course of audit, which took place in the year 2009, the same was made known to the Revenue and on further enquiry from the Shri. R.K. Sharma, Chief Manager (F&A) of the assessee/appellant stated that they were paying Royalty as per RBI guidelines to their associates. It was further alleged by the Revenue that they were required to deposit the service tax on the royalty payable even when the provision had been made in the Balance sheet of the appellant. Thereafter, Show Cause Notice was issued dated 03-01-2012 stating that vide explanation to Rule 6 which came into effect from 10-05-2008, the same was treated as retrospective; and accordingly service tax is leviable for the past period, on reverse charge method i.e. prior to 10/05/2008.

4. Having considered the rival contentions and on perusal of the case records, we find that in the amending Act in the Service Tax Rules, 1944, vide Notification No. 19/2008 ST dated 10-05-2008, it has been stated that the said amendment will have respective effect. Accordingly, we find that the issue is wholly interpretational and it has been so held by the ld.

AC

Commissioner in the impugned order. Accordingly, we hold that the extended period of limitation is not invokable, in the facts and circumstances of the case. The appeal is allowed and impugned order is set aside with consequential benefits to the appellant. So far as the merits are concerned, we hold that prior to 10-05-2008 service tax was not demandable under Rule 6 of Service Tax Rules, 1944 on the basis of book entries made for Cenvat credit prior to the insertion explanation in Rule 6 with effect from 10-05-2008. Accordingly, we hold that the demand is bad also on merits.

(Dictated and pronounced in the open Court)

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

(Ansari)

प्रमाणित प्रति / Certified True Copy
8.2.17
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