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: 28/12/2017

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

Final Order No. ST/A/71984/2017-CU[DB] dated 14/12/2017

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/MISC/70379/2017	ST/70091/2017	**National Construction Company** Flat No.-204,raj Apartments 7 Jopling 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):

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
Uttar Pradesh

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
ST/MISC/70379/2017
APPEAL No.ST/70091/2017-CU[DB]

(Arising out of Order-in-Appeal No. 687-ST/APPL-LKO/LKO/2016 dated 02/11/2016 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s National Construction Company **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri Vineet Kumar Singh, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR) &
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 14/12/2017
Date of Decision : 14/12/2017

FINAL ORDER NO.–71984/2017

Per: Anil Choudhary

The issue in this appeal is whether service tax has been rightly demanded under the head of 'Commercial & Industrial Construction Service' (CICS), under the admitted fact that the appellant had constructed New Petrol Bunks for BPCL which includes work like Construction of Building, Civil Structure including roads, etc. for the period 2004-05 to 2008-09.

2. Learned Counsel for the appellant has stated that under the similar facts and circumstances, the issue herein is squarely covered by the precedent ruling of this Tribunal in the case of M/s Gambhir Construction Company in Appeal No.ST/55763/2013-CU[DB] vide Final Order No.70559/2017 dated 05th June, 2017 wherein this Tribunal has held, as follows:-

"6. So far the merits are concerned the appellant have filed additional documents during the course of hearing which contain their registration certificate under the U.P. Trade Tax Act/Sales Tax and he has also taken us through the copy of work orders, wherein they are required to execute the construction works along with materials. We further find that the contractee namely BPCL have deducted Sales Tax/VAT, on the material component, at source and issued tax deduction certificate under the State Vat Act. In view of these facts it is crystal clear that the appellant have done works contract which was not taxable prior to 1 June, 2007. Further, we find from the show cause notice that there was no proposal to confirm the demand under the category of 'work contract' for the period 1 June 2007 and thereafter. Under these facts, we find that in view of the ruling of Hon'ble Supreme Court in the case of CCE and Customs Kerala vs. Larsen & Toubro Ltd. reported at 2015 (39) STR 913, the work done by the appellant is not classifiable under 'construction service' or 'commercial and industrial construction service'. Accordingly, we find that the show cause notice is not sustainable. Accordingly, we allow this appeal and set aside the impugned orders. The appellant shall be entitled for the consequential benefits in accordance with the law."

Further, he prays for allowing the appeal.

3. The learned A.R. has opposed the appeal and stating that even otherwise the category of CICS was in continuation

for period after 01.06.2007 and alternatively the appellant was liable to pay service tax under the head of 'Works Contract'.

4. Heaving considered the rival contentions, we find that the issue herein is squarely covered by the precedent order of this Tribunal in the case of M/s Gambhi Construction Company (supra).

5. Accordingly, we set aside the impugned order and allow the appeal filed by appellant. Miscellaneous Application also stands disposed of.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
29/01/18