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: 24/10/2017

To

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

Final Order No. A/71268/2017-SM[BR] dated 17/10/2017

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/70093/2016	**Bajaj Infrastructure Development Co Ltd** Maqsoodpur SHAHJAHANPUR 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):

Ms. Stuti Saggi.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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

APPEAL No. ST/70093/2016-CU[SM]

(Arising out of Order-in-Appeal No. 384-ST/APPL-LKO/LKO/2015 dated 12/10/2015 passed by Commissioner of Central Excise (Appeals), Lucknow)

M/s Bajaj Infrastructure Development Co. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 17/10/2017

FINAL ORDER NO. 71268/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. Order-in-Appeal No. 384-ST/APPL- LKO/LKO/2015 dated 12/10/2015 passed by Commissioner of Central Excise (Appeals), Lucknow.

2. The brief facts of the case are that the appellant having Service Tax Registration Certificate (ST-2) No. AADCB0423GSD003 were engaged in providing Consulting Engineer Services, Erection, Commissioning & Installation Services, Works Contract Services, G.T.A. Services & Business Auxiliary Service under Section 65 (105) of Finance

Act, 1994. The appellant took Cenvat credit amounting to Rs. 10,81,500/- of Service Tax paid by the Service Provider on repair of rough patches and pit holes on Powayan to Rosa Road siding between Powayan to Shahjahanpur in the month of February, 2011. It appeared to Revenue that the said service was provided outside the premises of the appellant-service receiver and therefore, the same was not admissible to as input service. Therefore, the appellant was issued with a Show Cause Notice dated 13/02/2012 proposing to deny the said credit and recover the same. The appellant submitted before the Original Authority that they got the work done by the Service Provider on repair of rough patches and pit holes on Powayan to Rosa Road siding between Powayan to Shahjahanpur through M/s B. S. Transcom Ltd. for the smooth movement of coal from railway siding to the Thermal Power Plant and that if the service was provided outside the registered premises of the service receiver, the same does not become inadmissible to them. The Original Authority did not appreciate the contentions and confirmed the demand and imposed equal penalty. Being aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal No. Order-in-Appeal No. 384-ST/APPL- LKO/LKO/2015 dated 12/10/2015. The ld. Commissioner (Appeals) set aside the penalty and upheld the recovery of Cenvat credit amounting to Rs. 5,87,100/-. Being aggrieved by the said order, appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant who has relied on Final Order No. A/54577-54579/2017 issued by this Tribunal in the case of M/s Mangalam Cement Ltd. *Versus* Commissioner of Central Excise, Jaipur-I reported at 2017-TIOL-3444-CESTAT-DEL. and submitted that in the said case it was held that though the wind mill was outside the factory premises of the appellant therein input service credit was admissible.

4. Heard the ld. A. R. for Revenue who supported the impugned Order-in-Appeal No. Order-in-Appeal No. 384-ST/APPL- LKO/LKO/2015 dated 12/10/2015.

5. Having considered the rival contentions and on perusal of the facts on record, I find that the only reason for denial of Cenvat credit was that the Service Tax was paid under the Works Contract Service which was rendered out the premises of the appellant. I do not find any provision in the law empowering Revenue to decide admissibility of Cenvat credit of Service Tax paid on the basis of such criteria as to whether it is outside the premises or inside the premises. If such contention is to be accepted then Service Tax paid on G.T.A. cannot be justified by Revenue. I, therefore, hold that the impugned Show Cause Notice is misconceived and not sustainable. Therefore, I set aside the impugned

Order-in-Appeal dated 12/10/2015 and allow the appeal. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
02/11/17

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