FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 12/04/2017

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

Final Order No. ST/A/70353/2017-CU[DB] dated 06/04/2017

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/70335/2016	**Kumar Engineering Co** (prop. Sri Bhagwan Singh) R/o 13/406, Chauri Gali, Obra, SONEBHADRA U.P.- 231219
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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

OM PRAKASH SHUKLA
ADVOCAT
S-8/109/G, AMRIT VILLA,
BESIDE INCOME TAX OFFICE,
M.A. ROAD, VARANASI, (U.P.)-
221002

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70335/2016-CU[DB]

(Arising out of Order-in-Appeal No. 124/ST/Alld./2015 dated 21/07/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

M/s Kumar Engineering Co. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Om Prakash Shukla, Advocate, for Appellant
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 & Date of Decision: 06/04/2017
FINAL ORDER NO....70353/2017......

Per: Anil Choudhary

The issue in this appeal is, whether the appellant is a provider of services in the nature of repair and maintenance, who have been charged service tax on their gross receipts which also includes material component.

2. The ld. Counsel, Shri Om Prakash Shukla, appearing for the appellant states that due to indifferent/ill-health of the Proprietor of the appellant, they could not receive all the notices and also could not take effective steps before the courts below and lead evidence. He, further, states that this Tribunal have in several similar cases allowed the appeals and remanded for a fresh decision in accordance with law.

3. Having considered rival submissions and the facts brought on record before this Tribunal, it appears that the appellant have also utilized materials in rendering the service of repair and maintenance and they are also registered under the Sales tax/VAT and they have paid Sales tax/VAT on the material component. Under such circumstances, it is evident that the Service tax is not chargeable on the material component which has suffered Sales tax or VAT. The ld. Counsel for the appellant have also submitted that the appellant have subsequently taken registration and have also filed returns and paid the admitted Service tax. In this view of the matter, we allow this appeal by way of remand and direct the appellant to appear before the Adjudicating Authority with a proper reply to the show cause notice along with supporting documents and seek an opportunity of hearing. The Adjudicating Authority shall pass a reasoned order taking into account the rulings laid down by this Tribunal and higher courts. The Adjudicating Authority shall pass a reasoned order within a period of 90 days from the date of submission of reply, as directed by this Tribunal. In the result, the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
28/04/2017
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