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: 11/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70343/2017-CU[DB] dated 07/03/2017

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/70259/2016	ST/70424/2016	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38..M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001

Name and Address of Respondent

2 Ganesh Yadav
D-63/13-a-1, Annpurna Colony,
Mahmoorganj,,,
VARANASI-U.P

Copy To

3Advocate(s) / Consultant(s):

VANASHRI DUBEY ADV
R/O 136/27/2 TAGORE TOWN,
ALLAHBAD-211002-U.P

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

ST/Stay/70259/2016
Appeal No. : ST/70424/2016-CU[DB]

Arising out of OIA No.267/ST/ALLD/2015 dated 16.12.2015 passed by Commissioner (Appeals), Central Excise & Service Tax, Allahabad.

For approval and signature:

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

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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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C.C. & C.E. & S.T.- Allahabad ...APPELLANT

VERSUS

Ganesh Yadav ...RESPONDENT

APPEARANCE

Shri Harish J., Dy. Commr., (A.R.) for the Department.
Ms. Vanashri Dubey, Advocate for the assessee-respondent.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 15. 11. 2016

FINAL ORDER NO. 70343/2017

Per Mr. Anil Choudhary :

The issue in this appeal filed by Revenue is whether the respondent-assessee is liable to service tax for constructing low cost housing or housing for economically weaker section for Varanasi Development Authority, Varanasi.

2. The brief facts as per the show cause notice are that the respondent has done civil construction for Varanasi Development Authority and received payment for the same. In response to inquiry by Revenue, the assessee informed by his letter dated 27.01.2010 that he is executing work for Varanasi Development Authority, Varanasi and is engaged in construction of houses for Below Poverty Line (BPL) families as per the contract and copy of the contract was also provided. It was further contended that service tax is not applicable as the same has not been paid by Varanasi Development Authority. The assessee in support of his contentions stated that he is doing business from January, 2008 only and submitted copy of Sales Tax Certificate wherein he was registered for works contract. Further, details were called for by the Revenue from the Finance Controller, Varanasi Development Authority, who furnished the desired information to the Revenue. It appeared to Revenue that the assessee-respondent have rendered services to Varanasi Development Authority under the category of "Work Contract Service". The respondent is constructing civil structures, new building or a civil structure or a part thereof as per the contract of Varanasi

Development Authority and have received payment for the same. Accordingly, the respondent is liable to pay Service Tax on such receipt from Varanasi Development Authority. Accordingly, Service Tax of Rs. 34,02,716/-was demanded and proposed to be recovered from the extended period i.e. 2007-08 to 2011-12. Further penalty was also imposed under Sections 70, 76, 77 & 78 of the Finance Act, 1994. The show cause notice was adjudicated on contest vide Order-in-Original dated 31.03.2015 and the proposed demand was confirmed under the category "Work Contract" as defined under Section 65(105) (zzzza) of the Finance Act, further penalty was imposed under Section 76 of the Act of two hundred rupees for every day during which such failure continued or @ 2% of the such tax, per month, whichever is higher, penalty of Rs. 10,000/- under Section 77 and further equal amount of penalty amounting to Rs. 34,02,716/- under Section 78 of the Act. Further, penalty was also imposed under Section 77(1)(a) of the Act of Rs. 200/- per day during which the respondent failed to take registration under Section 69 of the Finance Act. Being aggrieved, the respondent preferred appeal before learned Commissioner (Appeals), who vide impugned Order-in-Appeal have been pleased to allow the appeal setting aside the Order-in-Original. The learned Commissioner (Appeals) have recorded the finding that the constructions done by the respondent is neither commercial or industrial construction nor it is a construction of complex service. It was further observed that appellant provided service of construction of flats to Varanasi Development Authority under "Manyavar Kanshiram Sahari Garib Awas Yojna". The same is also not taxable under the category of construction of residential complex as defined under Section 65(91a) of the Finance Act as neither was any finding that the appellant has constructed 12 flats or residential units in each building or buildings. It was also stated that the flats were given to economically weaker sections and not for profit. All such activities were performed by the Sovereign/Public Authority i.e. Varanasi Development Authority under the provisions of law in the nature of statutory obligations in compliance of the policy of the Government of Uttar Pradesh. Such activity is purely in public interest. It has also been observed that the flats are allotted to the persons of economically weaker sections on lease basis and ownership remains with the Government. Accordingly, it was held that no Service Tax is payable under the category of Work Contract Service.

3. Being aggrieved, the Revenue is in appeal before this Tribunal. On the ground that the said service is taxable under sub-clause (zzzza) of Section 65(105) wherein it is provided as follows :-

> *"For the purpose of this sub-clause, 'works contract means a contract wherein :-*
>
> *i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
> *ii) Such contract is for the purposes of carrying out –*
> *(c) Construction of a new residential complex or a part thereof......"*

It is further contended by the Revenue that the Varanasi Development Authority was the service receiver and the construction was not for the personal use of party. The party (respondent) was liable to pay Service Tax under Works Contract Service. The respondent had himself admitted that he was providing service of work contract to Varanasi Development Authority. As such there was no dispute with regard to classification of the service rendered. The respondent claimed exemption on the basis of the nature of the project i.e. for construction of houses under Manyavar Kanshi Ram Saheri Garib Avas Yojna, was not acceptable under Notification No. 6/2011 dated 01.03.2011 wherein exemption to construction of residential complex and finishing and completion services thereto is for specified projects, under "Works Contract Services". The Notification specifically provides exemption to (a) construction of new residential complex or part thereof, (b) completion and finishing services of new residential complex or partly thereof under Jawaharlal Nehru Urban Renewal Mission and Rajiv Awas Yojana, from the whole of the Service Tax leviable thereon. It is contended by the Revenue that there is no specific exemption given to the Government of U.P. for Manyavar Kanshi Ram Saheri Garib Avas Yojna. It is further contended that activity of constructing houses for economically weaker sections for Varanasi Development Authority is taxable under the category "Works Contract Service".

4. Heard the parties.

5. We find that the issue in itself is incorrect. Larger Bench of this Tribunal in the case of ***Lanco Infratech Ltd. vs. CC, CE & ST – (2015) 38 STR 709 (Tri. – LB)*** has held that such activity which was not taxable prior to 01.06.2007 under the category of Commercial and

Industrial Construction continue to be non taxable under the category of Works Contract Service from 01.04.2007. Further we find that under similar facts and circumstances, a co-ordinate Bench of this Tribunal in the case of CCE Vs. Manoj Kumar Singh Appeal No. ST/70135/2015 vide a stay order dated 19.05.2016 was pleased to reject the stay application filed by Revenue under the similar facts and circumstances where the respondent Manoj Kumar Singh had constructed civil structures, repairing, doing alteration, renovation or restoration of old structures, completing and finishing job, installation of electrical and electronic devices etc. under contract and work orders of VDA, Varanasi . it was observed that *prima-facie* no service tax is leaviable on construction of low cost housing. It is also apparent that the flats constructed under the scheme are neither intended for commerce or industry but for the welfare of the weaker section of the society. A reference was also made to precedent decision in the case of ECP Housing (India) Pvt. Ltd. vs. Commissioner of Central Excise, Nasik reported at 2013(30) STR 703 wherein it was held that the demand under commercial and industrial construction for contract of construction divided into two parts of construction of stadium and construction of shopping complex around stadium held activity of construction of sports complex/stadium cannot be termed as commercial and industrial construction. We also agree with finding of learned Commissioner (Appeals) holding that the activity for constructing houses by the appellant for economically weaker section under works allotted by the Varanasi Development Authority under the scheme of Government of U.P., the activities is neither taxable under works contract services nor under Construction of Complex/Commercial or Industrial Construction Services more particularly under the exclusion clause which provides that construction classifiable under the category of residential complex service does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person and personal use have been further explained as including or permitting the complex for use as residence by another person on rent or without consideration. Accordingly, we dismiss the appeal of Revenue. The respondent-assessee will entitled to consequential benefit, if any, in accordance with law.

(Pronounced in the open Court) 10

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

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

Patel/-

प्रमाणित प्रति / Certified True Copy
25/04/2017
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