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: 05/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70059/2018-CU[DB] dated 03/01/2018

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/761/2012	**Alliance Builders & Contractor Ltd** Stadium Road, Bareilly. U.P)
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3Advocate(s) / Consultant(s):

Kapil Vaish
2nd floor, Part-A Krishna Janki Palace, 35-C, Rampur Garden, Civil Lines, Bareilly, 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, 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/761/2012-CU[DB]

(Arising out of Order-in-Original No. 18/COMMISSIONER/2011-12 dated 18/05/2012 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s Alliance Builders & Contractor Ltd. **Appellant**

Vs.

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

Appearance:

Shri Kapil Vaish, (CA), for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 03/01/2018

FINAL ORDER NO. 70059/2018

Per: Archana Wadhwa

The demand of Service tax to the extent of Rs.67,20,597/- stands confirmed against the appellant under the category of "Construction of Residential Complex Services" for the period 05/06/2005 to 31/03/2009, by comparing the ST-3 Returns figures with the Profit & Loss Account figures of their balance sheets.

2. The appellants provide services of Construction of Residential Complexes. They are registered with service tax department and have been paying service tax. When Revenue conducted audit of Bareilly and Rudrapur units of the

appellants for the periods 2005-06, 2006-07, 2007-08, 2008-09 it was found that there was a difference between gross receipts shown in the profit and loss account and the value of service rendered by them as declared in their service tax return. Since Revenue was of the view that the value of taxable services declared by the appellants in their return was not correct and there was short payment of tax, Revenue initiated proceedings for recovery of such short paid tax and the proceedings have culminated in the impugned order confirming tax amount of Rs.67,20,597/- along with interest and penalties under Sections 76 and 78 of the Finance Act, 1994. Aggrieved by the order the appellants have filed this appeal.

2. The Counsel for appellants submits the following main reasons for the difference in figures in profit and loss account and the figure in ST-3 return:

(i) Appellants have undertaken several housing projects and have sold complete houses which had been constructed on their own land. As no services were rendered to the customers in such situation appellant's activities were not liable to tax.

(ii) The amount received from customers during an year is not likely to tally with the amount of sale booked in profit and loss account. Whereas sale is booked on the basis of work completed, the amount received from the customer is the amount on which service tax is paid.

(iii) There was no liability for payment of service tax on the amount received prior to 15/06/2005.

(iv) Amount of Rs.15.03 crores recoverable from debtors as on 31/03/2009 is liable to be reduced from the amount of sale.

(v) No service tax was payable on the amount of Rs.2.44 crores received towards sale of shops during 15/06/2005 to 31/03/2009.

3. Learned CA for the appellants submits that on account of the above reasons, there is bound to be difference in the value of the services as reflected by them in the ST-3 Returns as also Profit & Loss Account. Learned CA also submits that though they were registered with the Service Tax Department and were paying Service Tax under the category of "Construction of Residential Complex Services" but the same was not taxable during the relevant period. In as much as, they were constructing the individual row-house and not a residential complex comprising of more than 12 units. He places strong reliancc on the Tribunal's decision in the case of Macro Marvel Projects Ltd. *Versus* Commissioner of Service Tax, Chennai reported at 20008 (12) S.T.R. 603 (Tri. – Chennai).

4. The learned A. R. appearing for the Revenue reiterates the findings of the Authorities below.

5. Apart from the fact that the demand cannot be raised on the basis of comparisons of ST-3 Returns and Profit &

Loss Account, without there being any other independent corroborative evidence, we also find force in the assessee's contention of reliance on the Tribunal's decision in the case of Commissioner *Versus* Macro Marvel Projects Ltd. reported at 2012 (25) S.T.R. J154 (S.C.).

6. Apart from the above, we also note that the Original Adjudicating Authority in Para 12 of his order has agreed that the entire consideration received by the appellant has been charged to Service Tax.

7. For the reasons recorded above, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
06/02/18

सहायक पंजीकार/Asstt. Registrar
38, A. G. MARG, ALLAHABAD-211001