FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 24/07/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52316/2015-CU[DB]** dated **14/07/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/57057/2013	ST/56570/2013	**Commissioner of Service Tax-Service Tax - Delhi** MG MARG... IP ESTATE, 17-B... IAEA HOUSE...I P ESTATE, DELHI-110002

Name and Address of Respondent

2 Bagai Construction
16-a, Udya Park,,,
N DELHI,
,N DELHI.110049

Copy To

3Advocate(s) / Consultant(s):

Shri. Narendra Singhvi, Advocate

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 14.7.2015

No. ST/Stay/57057/2013 and ST/56570/2013-CU(DB)

(Arising out of Order-in-Appeal No. 223/S. Tax/D-II/2012 dated 22.11.2012 passed by the Commissioner (Appeals),New Delhi)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CST, Delhi — Appellant

Vs.

M/s Bagai Construction — Respondent

Appearance:

Shri B.B. Sharma, D.R. - for the Appellant

Shri Narendra Singhvi, Advocate - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 52316/2015

Per **R.K. Singh :**

Stay petition along with appeal has been filed by Revenue against the Order-in-Appeal No. 223/ST/D-I/2012 dated 22.11.2012 in terms of which service tax demand of Rs.13,25,005/- confirmed along with interest and penalties by the primary adjudicating authority was set aside.

2. The issue involved in this case essentially is that the appellant paid service tax under the Works Contract Service @ 2.06% under Composition Scheme on the ground that service was rendered before 1.3.2008 although the payment was received after 1.3.2008, while the primary authority held that the correct rate of tax was 4.12% which was the rate applicable on the date of receipt of payment. The impugned demand arose as a result of the above dispute. It is contended by the respondent that the issue is no longer res integra and is settled by Delhi High Court in the case of ***Vistar Construction (P) Ltd. Vs. Union of India & Ors*** – 2013-TIOL-73-HC-DEL-ST.

3. The ld. DR agreed that the said judgement of Delhi High Court covers the issue.

4. We have considered the respondent's contention. We find that in the case of ***Vistar Construction*** (supra), the Delhi High Court has held that "the taxable event, in so far as service tax is concerned, is the rendition of the service. That being the position, the taxable events in the present writ petition had admittedly occurred prior to 1.3.2008. At that point of time the rate of service tax applicable in respect of the services in question was 2% and not 4%, which came

into effect only on or after 1.3.2008. Therefore the rate of tax applicable on the date of which the services were rendered would be the one that would be relevant and not the rate of tax on the date on which payments were received." The Delhi High Court in that judgement further held that the "TRU Circular F.No. 545/6/2007-TRU dated 28.4.2008 is contrary to law as declared by the Supreme Court and therefore has no existence in the eyes of law".

5. In the light of the issue having been settled in favour of the respondent by the said judgement of Delhi High Court in the case of ***Vistar Construction*** (supra), we find no merit in the Revenue's appeal. Therefore the stay petition and appeal are dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM