REGISTERED / AD

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

To

Dated: **20/08/2015**

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

Final Order No. **ST/A/52553/2015-CU[DB]** dated **28/07/2015**

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/50042/2014	ST/50037/2014	**J R Construction Company** Near Chhavi Cinema,suratgarh SRIGANGANAGAR RAJASTHAN 335804
			Name and Address of Respondent
2			C.C.E. & S.T.-Jaipur-i NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR, RAJASTHAN-302005

Copy To

3Advocate(s) / Consultant(s):

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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. 14 Office Copy 15 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 28.07.2015

For Approval &Signature :

Hon'ble Hon'ble 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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Application No. ST/STAY/50042/2014-CU[DB]
Appeal No.ST/50037/2014-CU[DB]

[Arising out of Order-in-Appeal No.109(VC)/ST/JPR-I/2013, dated 03.09.2013 passed by the C.C.E.(Appeals), Jaipur-I]

M/s. J R Construction Co. Appellant

Vs.

C.C.E.&S.T., Jaipur-I Respondent

Appearance
Shri Narendra Singhvi, Advocate - for the appellant

Shri Amresh Jain, DR - for the respondent

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

Final Order No. 52553/2015, dated 28.07.2015

Per Mr. R.K. Singh :

Stay application along with appeal has been filed against Order-in-Appeal dated 28.08.2013 which upheld the Order-in-Original dated 30.11.2011 except to the extent of allowing cum-tax benefit as a consequence of which the impugned demand was reduced from Rs. 24,09,943/- to Rs.21,86,881/- with corresponding reduction in the penalties imposed under sections 76 and 78 of the Finance Act, 1994. The impugned demand was confirmed on the ground that the appellant had provided "Commercial or Industrial Construction Service" (CICS), 'Maintenance and Repair Service', and 'Site formation and clearance, excavation and earthmoving and demolish Service' to Giral Lignite Thermal Power Project during the period 08.06.2005 to 17.10.2008 but did not pay service tax on the gross amount received from the service recipient.

2. The appellant has contended that (i) it has not been given 67% abatement under notification No. 15/2004–ST on the ground that the value of free supplies provided by service recipient was not included in the gross amount received, (ii) the entire work was completed prior to 01.06.2007. The service was rendered under works contracts where the value of the material ranges from 60% to 70% it they paid works contract tax at the rate of 1.5% to the state government. Works contract service became taxable under the Finance Act, 1994 [Section 65(105)(zzzza)] only w.e.f. 01.06.2007 while the entire service rendition

was completed prior to that date, (iii) works contracts were taxable by the state governments and were not liable to service tax prior to 01.06.2007 and therefore it had not taken registration as it was under a *bona fide* belief that composite (works) contracts were not taxable prior to 01.06.2007, (iv) there was no suppression or wilful misstatement and the entire demand was time-barred

3. The ld. Departmental Representative reiterated the contentions contained in the impugned order adding that not indicating the impugned demands under each service is not fatal.

4. We have considered the contentions of both sides. We agree with the contention of the appellant that it was eligible for 67% abatement on the gross amount received (without including the value of free supplies) in the wake of the judgement of CESTAT in the case of ***Bhayana Builders (P) Ltd. Vs. CST, Delhi [2013 (32) STR 49 (Tri. - LB)]***. We also find that the impugned demand has been confirmed under three different services without identifying as to how much demand pertains to each of them. However even if the non-identification of the components of the impugned demand under each of the services under which the impugned demand is confirmed is not taken to be fatal, the fact remains that the appellant right from the very beginning including at the time of adjudication by the primary adjudicating authority has been strongly pleading that the service was rendered under composite (works) contracts on which it paid works contract tax to state government and such works contracts in its *bona fide* belief were not liable to service tax

under the Finance act 1994 prior to 01.06.2007 when the works contract service was introduced under the Act of 1994. In paragraph 154 in Chapter XIII Part B of the speech of the Hon'ble Finance Minister's (budget 2007 – 08) it was stated as under:-

> *"State governments levy a tax on the transfer of property in goods involved in the education of works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract."*

Thus, it is evident that the appellant was not unjustified in holding the reasonable belief that works contracts were not taxable under the Finance Act, 1994prior to 01.06.2007 because even the speech of the Hon'ble Finance Minister quoted above gave the same impression. Indeed there was a great deal of confusion whether works contracts were vivisectable and liable to service tax prior to 01.06.2007, so much so that the Hon'ble President CESTAT setup Larger Bench of five Members to decide the issue and the issue was thus decided by the Larger Five-Member Bench of CESTAT in the case of L&T vide Interim Order No.IO/ST/72-74/2015 dated 20.03.2015. In these circumstances, it is not possible to sustain the allegation of wilful misstatement / suppression of facts on the part of the appellant. That being so, the entire demand is fattally hit by time-bar as the Show Cause Notice was issued on 23.06.2010 while even as per the Show Cause Notice the demand pertains to the period 08.06.2005 to 17.10.2008 and thus the entire impugned demand is beyond the normal period of one year.

5. In the light of the foregoing, we do not find the impugned demand sustainable and therefore we waive the requirement of pre-deposit and allow the appeal.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK