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: **19/05/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/51631/2015-CU[DB]** dated **05/05/2015**

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/59275/2013	ST/58654/2013	**G Construction** N-18, Site No.01 City Centre GWALIOR MADHYA PRADESH 474011
			Name and Address of Respondent
2			C.C.E. & S.T.-Indore P.B.NO.10...MANIK BAGH ROAD,MANIK BAGH PALACE, INDORE, MADHYA PRADESH-452001

Copy To

3 Advocate(s) / Consultant(s):

Shri. Dipak Kr. Bajpai, C.A

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 : 5.5.2015

No.ST/Stay/59275/2013 & ST/58654/2013-CU(DB)

[Arising out of Order-in-Original No. 5/COMMR/ST/IND/2012 dated 20.1.2012 passed by the Commissioner, Customs & Central Excise & Service Tax, Indore]

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?	

M/s G. Construction — Appellant

Vs.

CCE, Indore — Respondent

Appearance:

Shri Dipak Kr. Bajpai, C.A. - for the Appellan

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

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

F. Order No. 51631/2015

Per **R.K. Singh :**

Stay application along with appeal has been filed against Order-in-original dated 20.1.2012 in terms of which service tax demand of Rs.86,58,835/- for the period April, 2005 to March, 2009 was confirmed under "site formation and clearance, excavation and earthmoving and demolition service". Penalty under Sections 77 and 78, of Finance Act, 1994 was also imposed.

2. The appellant pleaded that it could not file any reply to the show cause notice nor could attend personal hearing because the proprietor Mrs. Manpreet Bajwa was diagnosed with cancer. As per the report of Medanta, The Medicity, submitted for our perusal, we find that the differential diagnosis is "Seros Adenocarcinma ? Ovary ? fallopian tubes Stage IV (left supraclavicular LN) Hypothyriodism" and the treatment plan included chemotherapy. As per this report she was admitted in 16.6.2010. It has also been contended that they actually paid service tax on the basis of actual receipts while the impugned demand has been raised on the basis of figures shown in their profit and loss account which were on accrual basis.

3. We take note of the fact that proprietor of the firm was diagnosed with cancer which also required chemotherapy. Being diagnosed with cancer is devastating to an individual. The show cause notice is dated 9.9.2010 and she was admitted to Medanta Hospital on 16.6.2010. In these circumstances, it is totally understandable that the appellant could not file reply to show cause notice or attend personal hearing as a result of which ex,parte order was issued by the Commissioner. Further it is also pleaded that due

service tax based on actual receipt had been paid by appellant. Having regard to the peculiar and sad circumstances of this case, we deem it fit to waive requirement of pre-deposit, set aside the impugned order and remand the case to the Commissioner for de novo adjudication after giving the appellant an opportunity of being heard.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM