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: **01/01/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53832/2015-CU[DB]** dated **28/12/2015**

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.**

8/1/16

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/50682/2014	ST/50538/2014	**Jaina Ram Builder And Contractor** Prabhu Colony,prajapati Nagar JODHPUR RAJASTHAN
			Name and Address of Respondent
2			C.C.E. & S.T.-Jaipur-ii N C R BUILDING,STATUE CIRCLE...C-SCHEME, JAIPUR, RAJASTHAN-302005

Copy To

3 Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur, Rajasthan

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. **16** Office Copy **17** Guard File

8/1/16

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 28.12.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

Service Tax Appeal No. 50538 of 2014 with
Service Tax Stay Application No. 50682 of 2014
(Arising out of order-in-appeal No. 298 – 299/OPD/CE/JPR-II/2013 dated 21.10.2013 passed by the Commissioner of Central Excise-II, Jaipur).

M/s Jaina Ram Builder & Contractor Appellants

Vs.

CCE&ST, Jaipur-II Respondent

Appearance:

Shri O. P. Agarwal, Advocate for the appellant
Shri B. B. Sharma, DR for the Respondent

Coram:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53832/2015

Per: Justice G. Raghuram:

Heard ld. Counsel for the appellant and the ld. DR for the respondent – Revenue.

2. At the stage of hearing the stay application, since the issue is covered in favour of the assessee by several decisions, we waive pre-deposit and dispose of the appeal itself, with the consent of both parties.

3. The appeal is against the order dated 21.10.2013 of the ld. Commissioner of Customs and Central Excise, Jaipur whereby Revenue's appeal against the adjudication order dated 04.10.2012 passed by the Additional Commissioner, Central Excise-II was allowed. The primary adjudication order dropped the demand initiated by the show cause notice dated 20.10.2011 on the ground that the appellant had constructed independent residential units for the Rajasthan Housing Board and this activity was outside the scope of the definition of Construction Of Complex Service defined in Section 65(30a) read with Section 65(91a) of the Finance Act, 1994.

4. The ld. appellate Commissioner however allowed Revenue's appeal and distinguished the decision of the Tribunal in ***A.S. Sicarwar*** and ***Macro Marvel Projects vs. CST – 2008 (12) STR 603 (Tri. Chennai)***. The later decision was affirmed by the Supreme Court while rejecting Revenue's appeal thereagainst. The impugned order of the ld. appellate Commissioner is fundamentally misconceived. It is contrary to the true and fair construction of the relevant statutory provisions as well as the interpretation placed thereupon by several decisions by the Tribunal including those referred to supra. It also requires to be noticed that the decision of this Tribunal in ***A.S. Sicarwar vs. CCE, Indore*** was confirmed by the Madhya

Pradesh High Court vide its order dated 19.09.2013 passed in an appeal preferred by Revenue thereagainst.

5. For the aforesaid reasons, the impugned order is quashed and the appeal is allowed. No costs.

(Justice G. Raghuram)
President

(B. Ravichandran) 30.12.15.
Member (Technical)

Pant