FAX : 011-26108426

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

Dated: 14/03/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/51039-51040/2014-CU[DB] dated 20/02/2014

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/467/2012	ST/224/2012	**LAKHLAN & QURESHI CONSTRUCTION COMPANY** 101, Koral Garima-B, 1/546, Chitrakoot Yojna, Jaipur(Raj)
2	ST/Stay/521/2012	ST/247/2012	**GYARSILAL MOHANLAL** 83, KARNI VIHAR, AJMER ROAD, JAIPUR (RAJASTHAN)

	Appeal	Name and Address of Respondent
1	ST/224/2012 ST/247/2012	**C.C.E. JAIPUR I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi

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.

COURT NO. I
DATE OF HEARING/DECISION : 20/02/2014.

Service Tax Stay Application No. 467 of 2012 in Appeal No. 224 of 2012 and
Service Tax Stay Application No. 521 of 2012 in Appeal No. 247 of 2012

[Arising out of the Order-in-Original No. 51/2011(ST)-COMMR. dated 17/10/2011 and Order-in-Original No. 67/2011(ST)-COMMR. dated 23/11/2011 both passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters 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 Lakhan & Qureshi Construction Company] Appellants
M/s Gyarsi Lal Mohan Lal]

Versus

CCE, Jaipur Respondent

Appearance

Shri Bipin Garg, Advocate – for the appellants.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice G. Raghuram, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No.51039-40/2014 Dated : 20/02/2014

Per. Rakesh Kumar :-

Since both the matters involved common point of dispute and similar facts, the same were heard together and are being disposed of by a common order.

1.1 The facts leading to these appeals and stay applications are, in brief, as under.

1.2 A show cause notice dated 22/4/10 was issued to M/s Lakhan Qureshi Construction Company, Jaipur [hereinafter referred to as M/s Lakhan] for demand of service tax amounting to Rs. 2,32,69,541/- alongwith interest and also for imposition of penalty on them under Section 76, 77 and 78 of the Finance Act, 1994. The show cause notice also sought appropriation of an amount of Rs. 8,70,216/- already deposited by M/s Lakhan. The show cause notice alleged that the appellant during the period from 2004-2005 to 2008-2009 have provided the service of construction of residential complex, commercial and industrial construction service and work contract service on which they had not paid any service tax. The show cause notice was adjudicated by the Commissioner vide order-in-original No. 51/2011 (ST)-COMMR. Dated 17/10/11 by which the Commissioner confirmed the service tax demand of Rs. 61,27,811/- alongwith interest thereon and beside this, imposed penalties under Section 76 of the Finance Act, 1994. Though the operative portion of the order is silent about the balance amount for recovery of which also M/s

Lakhan had been show caused, from findings in para 34 of the impugned order it appears that the rest of the amount whose demand has not been confirmed, pertains to the services which have been held by him as non-taxable. Against this order of the Commissioner, the appeal No. ST/224 of 2012 has been filed alongwith stay application No. ST/Stay/467 of 2012.

1.3 The show cause notice dated 02/7/10 was issued to M/s Gyarsi Lal Mohan Lal, 83, Karni Vihar, Ajmer Road, Jaipur [hereinafter referred to as GLML] for recovery of service tax amounting to Rs. 2,62,71,389/- from them alongwith interest thereon under Section 75 of the Finance Act, 1994 and also for imposition of penalty on them under Section 76, 77 and 78 of the Finance Act, 1994. This show cause notice also proposed imposition of penalty on Shri Rajendra Sharma, Partner M/s GLML under Section 77 (2) of the Finance Act, 1994. The show cause notice has been issued on the basis of allegation that M/s GLML had during the period from 2004-205 to 2008-2009 been providing the taxable services of commercial and industrial construction, construction of residential contract and work contract service on which the service tax had not been paid. This show cause notice was adjudicated by the Commissioner, Central Excise, Jaipur – I vide order-in-original No. 67/2011(ST)-COMMR. Dated 23/11/11 by which he confirmed the service tax demand of Rs. 70,89,140/- alongwith interest and imposed penalty on the appellant under Section 76 of the Finance Act, 1994. Though the operative portion of this order is silent about the rest of the amount of service tax demanded in the show cause notice, from the Commissioner's finding, it appears the rest of the amount which has not been confirmed pertains to the services considered non-taxable by him. Against this order of the Commissioner, appeal No. ST/247 of 2012 alongwith Stay Application No. ST/Stay/521 of 2012 have been filed.

1.4 Earlier the Tribunal vide ex-parte stay order No. ST/S/961 of 2012 dated 07/9/12 and No. ST/S/977 of 2012 dated 07/09/12 had directed the pre-deposit of Rs. 40,00,000/- within a period of four weeks from M/s GLML and pre-deposit of Rs. 30,00,000/- within a period of four weeks from M/s Lakhan and compliance in both the cases was to be reported on 07/11/2012, and since the appellant did not comply with the order of pre-deposit, their appeals were dismissed for non-compliance. Subsequently, miscellaneous applications were filed by both the appellants, and the dismissal orders were recalled on 20/12/2013. Accordingly, the appeals as well as stay applications have been restored and have been listed for hearing. Though, today these matters were listed for hearing of the stay applications, after hearing the same for sometime, the Bench was of the view, the same can be taken up for final disposal. Accordingly, with the consent of both the sides, the matters were heard for final disposal.

2. Heard both the sides.

3. Shri Bipin Garg, Advocate, the learned Counsel for the appellants, pleaded that in both the cases, the appellant had

constructed individual independent houses for Rajasthan Housing Board, that construction of such houses is not covered by the construction of complex service as defined under Section 65 (105) (ZZZh) readwith Section 65 (30a) and 65 (91a) of the Finance Act, 1994 and in this regard judgments of the Tribunal in the cases of **Macro Marvel Projects Ltd. vs. CST, Chennai** reported in **2008 (12) S.T.R. 603 (Tri. – Chennai)** and **Vinod Kumar Goyal vs. CCE, Jaipur – I** reported in **2011 (23) S.T.R. 30 (Tri. – Del.)** had been cited, but the Commissioner did not give any finding on this issue, that the judgment of the Tribunal in the case of **Macro Marvel Projects Ltd. vs. CST, Chennai** (supra) has been affirmed by the Apex Court vide judgment reported in **2012 (25) S.T.R. J154 (S.C.)** by which the Apex Court had dismissed the civil appeal filed by the Government against the Tribunal's judgment and that in view of this, the impugned orders are not sustainable.

4. Shri Amresh Jain, the learned DR, defended the impugned orders by reiterating the findings of the Commissioner. He, however, conceded that in both the cases, though the appellant's plea regarding construction of individual houses and the judgments of the Tribunal in the case of **Macro Marvel Projects Ltd. vs. CST, Chennai** (supra) and **Vinod Kumar Goyal vs. CCE, Jaipur – I** (supra) had been taken note of by the Commissioner, he neither examined this plea nor has given any finding in respect of the same.

5. We have considered the submissions from both the sides and perused the records.

6. The main plea of the appellant is that the residential units constructed by them were individual independent houses for Rajasthan Housing Board and the same were not covered by the definition of 'residential complex' as given in Section 65 (91a) of the Finance Act, 1994 and, hence, the services provided by the appellant was not taxable under Section 65 (105) (ZZZh) of the Finance Act, 1994 readwith Section 65 (30a) and Section 65 (91a) ibid and in this regard the appellant had cited the judgments of the Tribunal in the case of **Macro Marvel Projects Ltd. vs. CST, Chennai** (supra) and **Vinod Kumar Goyal vs. CCE, Jaipur – I** (supra), and as mentioned above, the judgment of the Tribunal in the case of **Macro Marvel Projects Ltd. vs. CST, Chennai** (supra) has been affirmed by the Apex Court, as civil appeal filed by the Government against this order has been dismissed and, hence, the same has become a binding precedent. However, we find that on this point there is absolutely no finding of the Commissioner. The Commissioner has not given any finding on the ~~point~~ plea of the appellants as to whether the houses constructed by them were independent houses not covered by the definition of residential complex as given in Section 65 (91a) of the Finance Act, 1994, and whether the judgments of the Tribunal in the case of **Macro Marvel Projects Ltd. vs. CST, Chennai** (supra) and **Vinod Kumar Goyal vs. CCE, Jaipur – I** (supra) are applicable to the facts of this case. In view of this, the

impugned orders are set aside and the matters are remanded to Commissioner for denovo adjudication after considering the pleas of the appellants that the residential units constructed by them were individual independent houses not covered by the definition of 'residential complex' as given in Section 65 (91a) of the Finance Act, 1994, in view of the judgments of the Tribunal, as mentioned above. The appeals as well as stay applications stand disposed of, as above.

(Operative part of the order pronounced in the open court.)

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

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