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: **05/05/2015**

To

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

Final Order No. **ST/A/51460/2015-CU[DB]** dated **07/04/2015**

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/54001/2014, ST/MISC/55336/2014	ST/53576/2014	**Lakhlan & Qureshi Contruction Company** 101, Koral Garima-b, 1-546, Chitrakoot Yojana, JAIPUR RAJASTHAN

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):

RUPENDER SINGH
ADVOCATE
M/S DSK LEGAL 4,
ARADHANA ENCLAVE
SECTOR 13 RK PURAM
OPPOSITE HYATT HOTEL
NEW DELHI-110066

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 07.04.2015

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/54001/2014-CU[DB]
Application No.ST/MISC/55336/2015-CU[DB]
Appeal No.ST/53576/2014-CU[DB]
[Arising out of Order-in-Original No.JAI-EXCUS-001-COM-142-13-14, dated 28.03.2014 passed by the C.C.E.&S.T., Jaipur-I]

M/s. Lakhlan & Qureshi Construction Co. Appellants

Vs.

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

Appearance
Shri Rupender Singh, Advocate - for the appellants

Ms. Suchitra Sharma, DR - for the respondents

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

Final Order No. 51460/2015, dated 07.04.2015

Per Mr. R.K. Singh:

Miscellaneous Application has been filed by the appellant-assessee requesting for early hearing of Stay Application as Revenue is pressing hard for recovery and it (the appellant – assessee) has a strong *prima facie* case in its favour. In the given facts and circumstances, we allow the Miscellaneous Application.

2. At the stage of considering the Stay Application, in view of the peculiar facts and circumstances of this appeal and after hearing the ld. consultant for the appellant and the ld. Departmental Representative for the respondent/Revenue, we dispose of the substantive appeal itself.

3. A Show Cause Notice was issued on 19.10.2012 proposing classification of the services provided by the appellant during 01.04.2009 to 31.03.2012 either as 'Construction of Residential Complex' service or/and 'Works Contract' service. A service tax demand of Rs.2,27,72,546/- was proposed. The Show Cause Notice also proposed levy of interest and penalties as specified therein.

4. The impugned adjudication order dated 28.03.2014 by the C.C.E., Jaipur-I confirmed service tax demand of Rs.2,27,72,546/- and also confirmed demand for interest and penalties under Sections 77 and 78 of the Finance Act, 1994.

5. The appellant/assessee failed to file a response to the Show Cause Notice dated 19.10.2012 and thus failed to rebut the allegations therein including on the classification or the valuation of the alleged

taxable services. Para 11 of the impugned order records that the petitioner/appellant failed to turn up and avail the opportunity of personal hearing as well. This paragraph records that on 25.09.2013, 09.10.2013 and 29.10.2013, being the dates scheduled for personal hearing, the appellant sought adjournments on one ground or the other.

6. At the hearing of the matter today, Shri Rupender Singh, ld. counsel contends that the impugned order is unsustainable on merits and also on the issue of bar of limitation, for a part of the period in issue.

7. Having carefully considered the material on record, we are of the view that a determination on the merits of the appeal invites analysis of disputed questions of facts and interpretation of the contracts in issue; analysis and application of exemption and abatement notifications; and of the Valuation and Composition Rules which were in operation. Such analysis of the relevant factual matrix and appreciation of relevant provisions of the Act and Statutory Rules is more appropriately done in primary adjudication by the Respondent Commissioner. The appellant/ assessee, by its consistent conduct of non-cooperation and non-participation in the adjudication proceedings, obstructed the due course of adjudication. This conduct of the appellant is clearly condemnable and leads to clearly avoidable waste of appellate time, involved in this Tribunal taking a first call on the analysis of the facts and law, applicable in this appeal.

8. In the circumstances, we are of the considered view that the appellant could be given one last opportunity to submit its response to

the Show Cause Notice dated 12.04.2012, but on terms as to heavy costs on account of its continuous and sustained conduct of non-cooperation with the adjudication process, at the primary level.

9. We therefore set aside the impugned order but on condition that the appellant deposits Rs.1 lakh towards costs to the credit of Revenue within 45 days from today and files its written response to the Show Cause Notice, without further excuse on any grounds whatsoever. The response of the appellant shall reach the respondent adjudicating authority within 45 days from today. If the appellant fails to deposit Rs.1 lakh within time specified herein or fails to file its written reply within the stipulated time, this appeal stands dismissed and the impugned adjudication order stands confirmed. If the appellant complies with both the above conditions, the adjudicating authority shall issue a fresh notice for personal hearing of the appellant which the appellant shall attend without seeking adjournment for any reason whatsoever, on the scheduled date intimated to it for such hearing. Thereafter the respondent shall dispose of the matter on the material available on record and without reference to the impugned order, dated 28.03.2014. We dispose of the appeal as above, with the consent of both parties.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK