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/51471/2015-CU[DB]** dated **22/04/2015**

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/52703/2014	ST/52178/2014	**Ashok Kumar Mehnot** 17-18, Mehnot Bhawan, Jeevan Deep Colony, Khoda Ganesh Road, Madanganj, Kishangarh AJMER 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):

Rupender Singh, Advocate
BSM LEGAL C-5/8 THIRD FLOOR SAFDARJUNG DEVELOPMENT AREA NEW DELHI-110016
12-21,UGF, ANTARIKSH BHAWAN, K.G. MARG, NEW DELHI,
DELHI-110001

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Application No. ST/Stay/52703/2014-ST (DB)
Appeal No. ST/52173/2014-ST (DB)
[Arising out of Order-in-Original No. 55(OPD)ST/JPR-II/2014 dated 06.03.2013 by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

For approval and signature:
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri R.K. Singh, Member (Technical)

Ashok Jindal

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 should 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 Departmental authorities?	

Ashok Kumar Mehnot **....Appellants**

Vs.

C.C.E. & S.T. Jaipur-II **....Respondent**

Appearance:

Shri Rupendra Singh, Advocate for the Appellants
Shri B.B. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri R.K. Singh, Member (Technical)

Date of Hearing: 22.04.2015

FINAL ORDER NO. 51471 /2015-ST (DB)

Per Ashok Jindal:

The appellant is in appeal against along with application of stay. After hearing both the sides at length we find that appeal itself can be disposed of at this stage. Therefore, stay application as well as appeal are taken up together for disposal with consent of both the sides.

Ashok Jindal

2. Facts of the case are that appellant is engaged in the activity of construction of residential complex i.e. LIG, HIG and MIG flats / houses. The contention of the appellant is that these are independent houses. Therefore, they are not covered under the services under category of construction of residential complex. Therefore, they are not liable for service tax but show cause notice was issued to the appellant and service tax was confirmed along with interest and various penalties was also imposed on them. The said order was challenged by the appellant before the Ld. Commissioner (A) who directed the appellant to make entire amount of pre deposit of service tax and for entertaining of appeal which appellant failed to do so. Against the said order appellant is before me.

3. Considered the submissions made by both the sides before me.

4. As this Tribunal in the case of ***Macro Marvel Projects Ltd. Vs. CCE Chennai-2008 (12) STR 603 (Tri-Chennai) which was affirmed by the Hon'ble Apex Court reported in 2012 (25) STR J154 (SC)*** they have observed that as these are independent houses therefore they are not covered under section of residential complex. The appellant has made out a case of waiver of pre deposit. Therefore, we waive the requirement of entire amount of service tax and penalty. We further find that as the Commissioner (A) has asked them to make a pre deposit. The said order is set aside. We further find as impugned order is not discussed on merits of the case. Therefore, it would be in the interest of the justice that

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appeal filed before the Ld. Commissioner (A) be heard on merits without insisting any pre deposit from the appellant. In these terms, the stay order passed by the Ld. Commissioner (A) is set aside and is remanded back to the Ld. Commissioner (A) to hear the matter on merits without insisting any pre deposit.

5. With these terms stay application as well as appeal are disposed of.

(Dictated and pronounced in the open court.)

28/04/15

(R.K. Singh)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

Bhanu