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: **02/07/2014**

To

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

Final Order No. **ST/A/52640-52641/2014-CU[DB]** dated **13/06/2014**

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/2485/2012	**Commissioner of Central Excise and Service Tax-Bhopal** 48...ADMINISTRATIVE AREA, ARERA HILL...HOSHANGABAD ROAD, BHOPAL, MADHYA PRADESH 462011
2	ST/2535/2012	**Sb Earthmovers Pvt Ltd** Jaiswal Bhawan, Jr Birla Road, Satna(mp)

		Name and Address of Respondent
1	ST/2485/2012	**S B Earth Movers Pvt** Jaiswal Bhawan, J R Birla Road, Satna.
2	ST/2535/2012	**Commissioner of Central Excise and Service Tax-Bhopal** 48...ADMINISTRATIVE AREA, ARERA HILL...HOSHANGABAD ROAD, BHOPAL, MADHYA PRADESH 462011

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Ramesh Nair
LAKSHMI VIHAR, AG- 192,
SCHEME NO. 54,
VIJAYNAGAR,
INDORE,
MADHYA PRADESH

6 Bar Association, CESTAT, Delhi

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 C.D.R. 16 Office Copy 17 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 : 13.6.2014

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?	

Appeal No. ST/2485/2012-CU(DB)

CCE, Bhopal — Appellant

Vs.

M/s S.B. Earth Movers Pvt. Ltd. — Respondent

Appeal No. ST/2535/2012-CU(DB)

[Arising out of common Order-in-Appeal No. 97/BPL/2012 dated 9.5.2012 passed by the Commissioner (Appeals), Central Excise, Bhopal]

M/s S.B. Construction Pvt. Ltd. — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance:

Shri Manish Saharan, Advocate - for the Assessee
Ms. Suchitra Sharma, A.R. - for the Revenue

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

F. Order No. 52640-52641/2014

Per R.K. Singh :

This order is being passed in respect of Appeal No. ST/2485/2012-CU(DB) filed by Commissioner of Central Excise & Service Tax, Bhopal against Order-in-Appeal No. 97/BPL/2012 dated 9.5.2012 in terms of which the penalties imposed vide Order-in-Original No. 22/ADC/ST/STN/2012 dated 31.1.2012 were set aside invoking provisions of Section 80 of Finance Act, 1994 and Appeal No. ST/2535/2012-CU(DB) filed by M/s S.B. Earthmovers Pvt. Ltd. against the same order-in-appeal which upheld the demand of service tax confirmed in terms of the same Order-in-Original (No. 22/ADC/ST/STN/2012 dated 31.1.2012).

2. Briefly stated, the Appellants' were engaged in providing site formation and clearance, excavation, earthmoving and demolition services to M/s Prism Cement Ltd. (hereinafter referred to as the Appellants). The allegation in the Show Cause Notice essentially is that they had evaded service tax by not including the value of diesel supplied free of cost by the service recipient to the Appellants in the value of service for discharging service tax liability. It was contended by the Appellant that the issue is settled in their favour in the case of ***Karamjeet Singh & Co. Ltd. Vs. CCE, Raipur*** - 2013 (32) STR 740 (Tri.-Del.).

3. In the Revenue's appeal it is contended that the Commissioner (Appeals) has incorrectly invoked the provisions of Section 80 of Finance Act, 1994 for setting aside the penalty and prayed for restoration of the same.

4. As is evident from the foregoing, the only issue involved in the Appellants' appeal is whether the value of diesel supplied free of cost by the service receiver should form part of the gross amount charged by the appellant for providing the said service.

5. The issue of includibility of the value of free supplies in the gross amount charged has been decided by the Larger Bench of CESTAT in the case of ***Bhayana Builders (P) Ltd. Vs. Commissioner of Service Tax. Delhi*** - 2013 (32) STR 49 (Tri.-LB), wherein it has been unambiguously held that the value of free supplies by the service receiver to the service provider is not includible in the 'gross amount charged' by the service provider from the service receiver. In view of this, any further discussion on the issue involved is unnecessary and unwarranted. It is accordingly held that the demand confirmed on the basis that the value of diesel supplied free of cost by the service receiver is includible in the gross amount charged is unsustainable. When the demand itself is not sustainable, the question of any penalty simply does not arise.

6. In view of the foregoing, the Appellants' appeal is allowed and the department's appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM