FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 03/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70584-70585/2016-SM[BR]** dated **15/07/2016**

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

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/70244/2016	ST/70410/2016	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES,ALLAHABAD, UTTAR PRADESH 211001
	ST/Stay/70248/2016	ST/70414/2016	

	Name and Address of Respondent
2	SURYA CARPETS PVT LTD UGAPUR,P.O.-AURAI,, BHADOHI,,UP-221301

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH N.K.SINGH, CONST
c/o party

4 Bar Association, CESTAT, Allahabad

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

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

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

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD

ST/Stay/70244 & 70248/2016
APPEAL No.ST/70410 & 70414/2016-(SM)

(Arising out of Order-in-Appeal No. 259 & 260/ST/ALLD/2015 dated 15/12/2015 passed by Commissioner of Central Excise & Service Tax (Appeals), Allahabad)

For approval and signature:

Hon'ble Mr. Anil G. Shakkarwar, 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 their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise & S.T., Allahabad — **Appellant**
Vs.
M/s. Surya Carpets Pvt. Ltd. — **Respondent**

Appearance:

Shri Ashutosh Nath, Assistant Commissioner (AR) — for Appellant
Shri N.K. Singh, Consultant — for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 15/07/2016
Date of Decision : 15/07/2016

Final Order No is 70584-70585/2016

Per: Anil G. Shakkarwar

The above stated two stay applications and two appeals are being taken up together for decision. Both the appeals are arising out of common Order-in-Appeal No.259-260/ST/ALLD/2015 dated 15/12/2015 passed by Commissioner of Central Excise & Service Tax (Appeals), Allahabad.

2. The brief facts of the case are that the respondent is manufacturer and exporter of carpets and registered under Service Tax, with the Department.

3. Respondent had filed application for refund of Service Tax amounting to Rs.2,37,697/- under Notification No.41/2012-ST dated 29.06.12 for the period from October, 2013 to December, 2013. The said refund application was decided through Order-in-Original No. 44 (ST) Refund/Surya Carpet/2013 dated 06.12.2013, wherein the original authority sanctioned the refund of Rs.37,639/- and held that a refund of Rs.2,00,058/- was liable for rejection. For subsequent period that is January, 2013 to March, 2013, respondent filed another refund claim under the said Notification claiming a refund of Rs.3,17,027/- which was decided through the Order-in-Original No. 45 (ST) Refund/Surya Carpet/2013 dated 06.12.2013. The Original Authority sanctioned the refund of Rs.52,448/- and held that the refund of Rs.2,64,579/- was not admissible to the respondent. Respondent preferred appeal against the above stated two Orders-in-Original. The

said appeals were decided through the impugned order in appeal wherein the learned Commissioner (Appeals) has held as follows:-

> "Therefore, I allow both the appeals with the direction to refund Rs.2,00,058/- and 2,64,579/- to the appellant as per Law.
>
> It is also noted that the Notification itself prescribed the admissible rate of rebate of Service Tax paid on the taxable Service Tax which are received by exporters of Goods and used for exports of goods as specified in the Notification No.41/2012-ST dated : 29.06.2012.
>
> In appeal No.19/ST/APPL/Alld/2014, the amount of Rs. 22858.87 was rejected as time barred and Rs.686/- was rejected on account of non production of original copy of Service Tax invoice vide O-I-O 44 (ST) Refund/Surya Carpet/2013. Since the Appellant has not submitted any documentary evidence to negate the factual finding of the Adjudicating authority, I upheld the finding of the Adjudicating authority on these two accounts.
>
> Accordingly, the Appeal No. 19/ST/Appl/Alld/2015 and 20/ST/Appl/Alld/2014 are disposed of in the above terms. The impugned O-I-O is modified to that extent."

4. Aggrieved by the order, passed by Ld. Commissioner (Appeals), the Commissioner of Central Excise and Service Tax, Allahabad has preferred present appeals with a prayer to set aside the said order-in-Appeal. The grounds of appeal inter-alia stated that the ld. Commissioner (Appeals) has over looked the fact that para 1 (c) of Notification No. 41/2012-ST dated 29.06.12 clearly provides that rebate under the procedure specified in paragraph no.3 shall not be claimed, wherever the deference between the amount of rebate under the procedures specified in paragraph no. 2 and 3 is less than 20% of the rebate available under the procedure specified in paragraph no.2 and that the refund allowed by ld. Commissioner (Appeals), difference between the amount of rebate under the said paragraph no. 2 & 3 is less than 20% and therefore, the Order-in-Appeal is erroneous.

5. The Learned A.R. for Revenue presented in the case.

6. The Ld. Consultant for respondent has defended the order passed by the ld. Commissioner (Appeals).

7. I have taken into consideration the rival contentions. After going through the operational part of the impugned Order-in-Appeal, I find that the ld. Commissioner (Appeals) has held that the refund of Rs.2,00,058/- and Rs.2,64,579/- are eligible to the respondent. I further find that out of the claim of Rs.2,37,697/- the original authority had allowed refund of Rs.37,639/- and rejected the amount of Rs.2,00,058/- whereas the deference between Rs.2,37,697/- and Rs.37,639/- is Rs.20,0062/-. Further, the learned Commissioner (Appeals) had held that amount of Rs.22,858.87/- and Rs.686/- rejected by the Original authority is as per Law. These findings are contrary to the finding that the refund of Rs.2,00,058/- is admissible. I, therefore, remanded the matter back to ld. Commissioner (Appeals) to reconsider the whole issue and passed an appropriate order as per Law. Both the appeals filed by the revenue are disposed accordingly. As a result stay applications have become infructuous and they are disposed of as infructuous.

(Dictated in Court)

-Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

akp

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001