FAX : 0532-2400149

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

Dated: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70935/2016-EX[DB] dated 26/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2739/2007	HINDUSTAN AERONAUTICS LTD. TRANSPORT AIRCRAFT DIVISION, P.BOX 225, CHAKERI, KANPUR
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3 Advocate(s) / Consultant(s): SH BIPIN GARG,ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI-70

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 58
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/2739/2007-EX[DB]

(Arising out of Order-in-Appeal No. 241-CE/APPL/KNP/2007 dated 29/06/2007 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
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

M/s Hindustan Aeronautics Limited — **Appellant**

Vs.

Commissioner of Central Excise, Kanpur — **Respondent**

Appearance:

Ms. Stuti Saggi, Advocate, — for Appellant
Shri Pawan Kumar Singh, Superintendent, (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 26/09/2016

FINAL ORDER NO....70335/2015....

Per: Anil G. Shakkarwar

The present appeal filed by the appellant, M/s Hindustan Aeronautics Limited, is against Order-in-Appeal No. 241-CE/APPL/KNP/2007 dated 29/06/2007 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The brief facts of the case are that the appellant, M/s Hindustan Aeronautics Limited, (M/s HAL) had registered themselves under Maintenance & Repair Services for discharge of Service Tax, M/s Hindustan Aeronautics Limited, paid an amount of Rs.2,67,83,104/- for the activity of up-gradation of some of the aircrafts of defence forces through four contracts treating the same as Service Tax payable under Maintenance & Repair Services. Subsequently they realized that the up-gradation of Defence Aircrafts undertaken by them was not satisfying the definition of Maintenance & Repair Services therefore through application dated 23-06-2006 received by Assistant Commissioner, Central Excise Division-III, Kanpur on 26-06-2006 they applied for refund of Rs.2,67,83,104/-. The amount of Rs.2,67,83,104/- claimed also included interest of Rs.21,63,503/-. The grounds for claiming the said refund was that the up-gradation work carried out by them was not activity related to Maintenance & Repair Services but it was activity related to manufacture. The Deputy Commissioner, issued a Show Cause Notice

proposing to reject the said claim of refund stating that it appeared to Revenue that the activities undertaken by M/s Hindustan Aeronautics Limited, were covered under the ambit of definition of Maintenance & Repair Services. The said refund application was decided through Order-in-Original No. 19/STC/ACK-III/2006 dated 02-11-2006. The Original Authority has held that M/s Hindustan Aeronautics Limited, have voluntarily deposited Service Tax and the contract numbers mentioned by M/s Hindustan Aeronautics Limited in their refund claim were different from those mentioned on the invoices submitted along with refund claim and rejected the application for refund. M/s Hindustan Aeronautics Limited, carried matter before Commissioner (Appeals). The ld. Commissioner (Appeals) has decided said appeal through Order-in-Appeal No. 241-CE/APPL/KNP/2007 dated 29/06/2007 and rejected the appeal by upholding the said Order-in-Original No. 19/STC/ACK-III/2006 dated 02-11-2006. Aggrieved by the said Order in Appeal M/s Hindustan Aeronautics Limited is before this Tribunal. The main ground of appeal is that the activities carried out under the up-gradation contracts were manufacturing activities and they had wrongly classified it as Maintenance & Repair Services. They, further, contended that the agreement between M/s Hindustan Aeronautics Limited, and Defence Establishments of Government of India was to undertake up-gradation of Defence Aircrafts and to supply upgraded aircraft and that the up-gradation involved addition of new features to the existing Aircrafts. They further submitted that the meaning of word 'upgrade' as provided in English Oxford Dictionary is "to raise to a higher standard or rank" ~~rant"~~ and contended that the meaning does not equate to Maintenance & Repair.

3. Ms. Stuti Saggi, Advocate, was appointed as amicus curiae by this Bench to assist the Bench in deciding this matter Ms. Stuti Saggi, Advocate, presented the case and submitted that the contracts between M/s Hindustan Aeronautics Limited, and Defence Establishments was for up-gradation of aircrafts and they were not for Maintenance & Repair Services though M/s Hindustan Aeronautics Limited were register for payment of Service Tax under Maintenance & Repair Services specific contracts in respect of which up-gradation of Defence Aircrafts was undertaken were not related to Maintenance & Repair Services and it was related to manufacturing and up-gradation of the existing aircrafts. The Ld. D.R. has supported both the Order-in-Original & Order-in-Appeal.

4. We have taken rival contentions into consideration. We have also gone through the finding of Original Authority. We find that Original Authority has stated that the contract numbers mentioned in refund claim were different from the ones mentioned on the invoices submitted alongwith refund claim. It was his responsibility to seek the correct invoices from M/s Hindustan Aeronautics Limited, and examine the

issue based on contracts and connected invoices. It was the responsibility of the Original Authority to give finding on the basis of contracts and invoices whether the activity was Maintenance & Repair Services or not before rejecting the refund claim. The Original Authority has failed in his duty of adjudication that is to seek appropriate evidence, examine the evidence and to arrive at correct finding. It is unfortunate that Commissioner (Appeals) did not remand the matter back to Original Authority to arrive at correct finding by examining evidence. We find that Original Authority has not established that the activity carried out by M/s Hindustan Aeronautics Limited, amounts to Maintenance & Repair Services. Therefore, we are satisfied that in respect of the up-gradation activity undertaken by M/s Hindustan Aeronautics Limited, the same did not amount to providing of service for Maintenance & Repair Services. Therefore, the amount deposited by M/s Hindustan Aeronautics Limited, in respect of which they sought refund was not due to exchequer as Service Tax. Therefore, we direct the Original Authority to refund the amount deposited as Service Tax on account of Maintenance & Repair Services in respect of the activity by M/s Hindustan Aeronautics Limited for up-gradation of aircrafts which were undertaken by them on behalf of Establishments of Defence of Government of India through said four contracts. M/s Hindustan Aeronautics Limited, may submit a copy of this order to the Office of the Original

Authority and on receipt of such copy in the Office of Original Authority, the Original Authority shall allow the application for refund within sixty days from date of receipt of copy of this order. The appeal is allowed in above terms. This Bench appreciates the assistance provided by Ms. Stuti Saggi, Advocate, as Amicus Curiae.

(Dictated and pronounced in Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

25.1.2016