FAX : 0532-2400149

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

Dated: 29/12/2016

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

Final Order No. A/71176/2016-SM[BR] dated 27/12/2016

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/898/2009 | **Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005 |
| | | Name and Address of Respondent |
| 2 | | BASANT OVERSEAS OPPOSITE AMAR UJALA PRESS, BYE PASS ROAD,,AGRA,,UP |

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 – 38

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**

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

**Appeal No.ST/898/2009-ST[SM]**

Arising out of Order-in-Appeal No.238-ST/APPL/KNP/2009 dated 28.08.2009 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

Commissioner of Central Excise & S.T., Kanpur

...APPELLANT(S)

**VERSUS**

M/s Basant Overseas

...RESPONDENT (S)

**APPEARANCE:**

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

Ms. Stuti Saggi, Advocate for the Assessee (s)

**CORAM:**

**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

DATE OF HEARING & PRONOUNCEMENT : 27.12.2016

FINAL ORDER NO.- 71176/2016

**Per Mr. Anil G. Shakkarwar:**

The present appeal is filed by the Revenue against Order-in-Appeal No.238-ST/APPL/KNP/2009 dated 28.08.2009 passed by Commissioner (Appeals), Kanpur.

2. The brief facts of the case are that the respondents were paying commission to their foreign-based commission agents for providing the services of procurement of orders for their principle and such services were covered by the definition of Business Auxiliary Service. They paid under reverse mechanism Service Tax for the year 2005-06, 2007-08 & 2008-09 (up to September 2008). The respondent through application dated 27.01.2009 filed a refund claim of Rs.27,35,553/- stating that services were performed and received outside India, and

therefore, they were not liable to pay Service Tax and Service Tax so paid may be refunded. The Original Authority decided the said refund application through Order-in-Original No.197/08-09/AC/ST/Ref/Agra dated 24.03.2009, rejecting the said refund application. The respondent preferred appeal before Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) has examined the matter and provisions of law related to liability for payment of Service Tax under reverse mechanism and held that prior to 18.04.2006, there was no authority of law for the service recipient to discharge service tax liability. Therefore, he allowed refund of service tax paid by the respondent for the period prior to 18.04.2006. Further, in respect of period subsequent to 18.04.2006, the Ld. Commissioner (Appeal) has held that Service Tax paid by the respondent was as per Law. The said decision of Ld. Commissioner (Appeal) was passed through Order-in-Appeal No.238-ST/APPL/KNP/2009 dated 28.08.2009. Aggrieved by the said order, Revenue is before this Tribunal.

3. The ground of appeal by Revenue indicates that they are emphasizing on Rule 2(1)(d)(iv) of Service Tax Rules, 1994 and argued that as held in the case of Associated Cement Co. Ltd. Vs. Commercial Tax Officer, Kota reported at (1981) 4 SCC 578-para 20, 21, rules framed under the statutory provisions have to be read as part of the statute.

4. Heard the Ld. DR for the Revenue, who took me through the grounds of appeal.

5. Heard the learned counsel for the respondent, who has supported the findings of the Ld. Commissioner (Appeal).

6. Having considered the rival contentions, I find that Ld. Commissioner (Appeal) has examined the issue of leviablity of Service Tax for the period prior to 18.04.2006 i.e. prior to introduction of charging Section 66A of Finance Act, 1994, and held that Hon'ble High Court of Mumbai in the case of M/s Indian National Ship Owners Association Vs. Union of India reported at 2009 (013) STR 0235 (Bom.) and Hon'ble High Court of Delhi in the case of M/s Unitech Ltd. Vs. CCE reported at 2009 (15) STR 285 (Del.), have held that Service Tax on the services provided by respondent or from outside India, who does not have any office in India, was not leviable prior to 18.04.2006. I do not find any reason to interfere with the findings of the Ld. Commissioner (Appeal). I, therefore, dismissed the appeal filed by Revenue.

(Dictated & pronounced in the open Court)

**(Anil G. Shakkarwar)**
**Member (Technical)**

Mishra

प्रमाणित प्रति / Certified True Copy
30/1/12

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