REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 07/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70015 /2015- dated 14/09/2015

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
	ST/1421/2010	COMISSIONER OF CENTRAL EXCISE, KANPUR, 117/7, SARVODAYA NAGAR, KANPUR.

Name and Address of Respondent	SURI SHOES(P) LTD 117/Q/67, SHARDA NAGAR, KANPUR.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

4 Bar Association, CESTAT, Delhi
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), Vaithyarem 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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

[redacted]

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

APPEAL NO: ST/1421/2010

[Arising out of Order-in-Appeal No: 374-ST/APPL/KNP/2010 dated 21/07/2010 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur.]

For approval and signature:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Commissioner of Central Excise & Service Tax
Kanpur ...*Appellant*

versus

Suri Shoes (P) Ltd. ...*Respondent*

Appearance:

Shri Bharat B. Sharma, Asstt. Commissioner (AR) for the appellant

None for the respondent

CORAM:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

Date of hearing:	**16/09/2015**
Date of decision:	**16/09/2015**

Final **ORDER NO:** 70015/2015

Per: P. S. Pruthi:

Revenue is in appeal against the order dated 21/07/2010 passed by the Commissioner (Appeals).

2. The facts are that the appellant who are engaged in manufacture and export of footwear made payment of commission to foreign agents for the services of procuring supply orders in the foreign market. Vide the impugned order, the Commissioner (Appeals) referred to the case of *Indian National Shipowners' Association vs. Union of India* 2009 (013) STR 235 (Bom.) in which the Hon'ble Bombay High Court held that:

> *"It appears that it is first time when the Act was amended and Section 66A was inserted by Finance Act, 2006 w.e.f. 18/04/2006, the Respondents got legal authority to levy service tax on the recipients of the taxable service. Now, because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non-resident or is from outside India. Before enactment of Section 66A it is apparent that there was no authority vested by law in the Respondents to levy service tax on a person who is resident in India, but who receives services outside India. In that case till Section 66A was enacted a person liable was the one who rendered the services. In other words, it is only after enactment of Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66A, there was no such provision in the Act and therefore, the Respondents had no authority to levy service tax on the members of the Petitioners-Association."*

Accordingly the Commissioner held that the tax liability will arise only for the period subsequent to insertion of Section 66A in the Finance Act, 1994.

3. Revenue's appeal is on the ground that the activity is taxable even after 18/04/2006 by virtue of Rule 3(iii)(c) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

4. It is the settled law that prior to insertion of Section 66A there was no authority vested by law to levy service tax on a person resident

in India who receives services from outside India. Therefore the impugned order is upheld and the appeal is dismissed.

(Pronounced in Court)

Sd/-	Sd/-
(S.S. Garg)	**(P.S. Pruthi)**
Member (Judicial)	**Member (Technical)**

प्रमाणित प्रति / Certified True Copy

26-10-15

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, [illegible]
अपील [illegible] (C.E.S.T.A.T.)
38, एम. जी. [illegible]
38, M. G. Marg, [illegible]