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

Dated: 16/5/2016

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

Final Order No. A/ 70185/2016 DB& SO 70148/2016 dated 10/05/2016

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
ST/STAY/52416/2014	ST/51928/2014	RAJ RATAN CASTINGS PVT LTD 7/141, A-3, SWAROOP NAGAR KANPUR
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, KANPUR 117/7, SARVODAYA NAGAR, KANPUR

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH DHARMENDRA SRIVASTAVA,CA
13/392(1)CIVIL LINES,
KANPUR

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 C.D.R. 15 Office Copy 16 Guard File.
17.M.S KNOWLEDGE PROCESSING PVT LTD(TAMMANAGEMENTINDIDA.COM)

Asstt. Registrar
Regional Bench, Allahabad

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

DIVISION BENCH

ST/Stay/52416/2014 and Appeal No. ST/51928/2014 (DB)

Dated of Hearing/decision: 10/5/2016

[Arising out of Order-in-Appeal No. 09-ST/APPL/KNP/2014 dated 09.01.2014 passed by Commissioner (Appeal), Central Excise & Service Tax, Kanpur]

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 Raj Ratan Castings Pvt. Ltd. Appellant

Vs.

C.C.E. & S.T. Kanpur Respondent

Appearance:
Present for the Appellant: Shri Dharmendra Srivastava, Chartered Accountant
Present for the Respondent: Shri A.K. Goswami, (Addl. Commissioner) AR

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70185/2016
STAY ORDER No. 70148/2016

Per: Anil G. Shakkarwar

Heard both the parties.

2. This matter was dealt with by this Tribunal and disposed by passing Final Order No. ST574/2011 dated 18.10.2011 wherein it was held that the core question required to be decided is whether the Service Tax on commission earned by mutual fund distributor is to be paid by mutual fund distributor or mutual fund company during the period of dispute and the view of ld. authority below on the above legal issues were not available. The impugned order in the said appeal was set-aside and matter was remanded to Original Adjudicating Authority for de-novo decision.

3. The brief facts of the case are that the appellant was distributor of mutual fund units and received commission from mutual fund companies. The Commission received by the appellant from the said company stand taxed by authorities below on the ground that they have provided Business Auxiliary Services to the mutual fund companies.

4. In compliance to the said directions of this Tribunal the Original Authority passed the Order-in-Original dated 24.12.2012 and confirmed the demand and held that Service Tax amount of Rs. 39,91,730/- is liable to be paid by appellant. The appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) through his order dated 11.10.2013 directed the appellant to deposit 30% of Service Tax confirmed as pre-deposit. Further ld.

Commissioner (Appeals) through his Order-in-Appeal dated 09.1.2014 dismissed the appeal for non-compliance of above stated Stay Order dated 11.10.2013 without going into the merits of the case.

5. Ld. Shri Dharmendra Srivastava, C.A. contended that with the issue of Notification No. 7/2005 (ST) dated 01/03/2005, the liability of payment of Service Tax is on the Mutual Fund Company and not on the appellant. Shri A.K. Goswami, the ld. Additional Commissioner, AR has stated that the appellant had to satisfy three conditions as stated on Page 8 of Order-in-Original dated 24/12/2012 and since the said conditions are not fulfilled by the appellant, the benefit of said notification dated 01/03/2005 is denied to the appellant by the original authority.

6. After careful considered of the submission made by both the sides we find that ld. Commissioner (Appeals) as not based his decision on merit of the case particularly when this Tribunal had observed that the views of the authorities below on the legal issue dealt with in this Tribunal's above referred order dated 18.10.11 are not available. We are of the view that the matter is prima facie in favour of appellant with the issue of Notification No. 7/2005 (ST) dated 01/03/2005. We, therefore, set aside the impugned order and remand the matter to ld. Commissioner (Appeals) for decisions on merits with directions to hear the appellant without any pre-deposit.

7. Both the Stay and Appeal disposed in above terms. No costs.

(Dictated and pronounced in the open Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

प्रमाणित प्रति / Certified True Copy
7.6.16
/ Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001