FAX : 0532-2400149

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

Dated: 13/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71120/2016-CU[DB] dated 02/11/2016

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/52600/2014	MOTHERSON AUTO LTD C-1 A&B, SECTOR-1, NOIDA,UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN, ALD
3/1A/3 OPP AUTO SALES, COLVIN
ROAD, LOHIA MARG ALLAHABAD-
211001

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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 Nos.ST/52600/2014-CU[DB]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/216/13-14 dated 18.11.2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida.

For approval and signature:

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

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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes 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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M/s Motherson Auto Ltd.

...APPELLANT(S)

VERSUS

C.C., C.E. & S.T., Noida

...RESPONDENT (S)

APPEARANCE
Shri Atul Gupta & Shri Hrishikesh, Advocates for the Appellant(s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 02.11.2016

FINAL ORDER NO.- 71120/2016

Per Mr. Anil Choudhary :

The issue in this appeal is that the appellant-provider of taxable services namely Management Consultant & Renting of immovable property etc. is, "whether the service or training received by their employee, who have undergone Management Course at Columbia University, New York, by travelling and staying at New York for the said course during the period 2007-08 can be said to be a service rendered from outside India and received in India".

2. The brief facts of the case are that the vide show-cause-notice dated 16th April, 2012, the appellant was directed to show case as to why Service Tax of Rs.4,76,376/- should not be demanded, and recovered for payment in Foreign exchange for the Management Course attended by their employee at Columbia University, New York during the period April, 2007 to January, 2008, for which fee was paid Rs.38.58 lacs, remitted in foreign currency to Columbia University, New York. The SCN was adjudicated vide O-I-O dated 15th April, 2013 on contest and the proposed demand was confirmed with interest and further equal amount of penalty was imposed under Section 78 of the Finance Act. The Adjudicating Authority observed that the service so received, falls under the category of Commercial Training & Coaching, as defined under Section 65(105), clause (zzc) of the Finance Act, 1994. It is further held that although, the provisions of Service Tax are not applicable on services provided by a Foreign University, but the services have

been received by the assessee, who happens to be in India, as such by virtue of Section 66A of the Finance Act, the assessee is rightly liable to pay Service Tax. Being aggrieved, the appellant preferred appeal before the Ld. Commissioner (Appeal) who was pleased to dismiss the appeal, upholding the Order-in-Original.

3. Heard the parties.

4. The learned counsel for the appellant urges that it is admitted fact that the employee of the appellant traveled to New York and attended the Class at Columbia University, situated at New York. Thus, the services have been rendered and received by the employee of the assessee at New York, which is outside the taxable territory, and the provisions of the Finance Act, 1944 (Service Tax) do not extend to areas located outside India. Further the Adjudicating Authority have erred in holding that the services received by the employee of the assessee at New York, have been received by the assessee in India. As such, the impugned order is not sustainable. He further urges that under the facts and circumstances, that the transaction has been recorded properly in the books of account admittedly, the extended period of limitation is not attracted and demand is bad on this score also.

5. The Ld. A.R. for Revenue relies on the impugned order.

6. Having considered the rival contentions and on perusal of record, we find that under the facts and circumstances, the service received by the employee of the assessee at New York, cannot be said to be

service rendered from America or outside India and received by the assessee in India. Accordingly, under the provisions of Taxation of Service (provided from outside India and Received in India) Rules, 2006 read with Circular F.No.B1/4/2006-TRU, dated 19.04.2006, wherein Para 4.2.8, it have been clarified that "specified taxable services, which involve physical performance, fall under Rule 3(ii) of the said Rules and the same are treated as services provided from outside India and received in India, if such services are partly or wholly performed in India". We hold that in the facts and circumstances neither the service was performed in India partly or wholly. Accordingly, we set aside the impugned order, with consequential benefits, if any, and appeal is allowed.

(Dictated and Pronounced in the open Court)

Sd/- Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
22.12
सहायक रजिस्ट्रार / Asst. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद 211001
38, M. G. MARG, ALLAHABAD-211001