FAX : 0532-2400149

REGISTERED / AD

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

Dated: 27/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70304/2017-SM[BR] dated 15/02/2017

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/CROSS/74/2012	ST/144/2011	C.C.E, GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
			Name and Address of Respondent
2			PATHAK & CO., 11-B, ASHOK VATIKA, WAZIRABAD ROAD, PASONDA, SAHIBABAD, GHAZIABAD.,,

Copy To

3 Bar Association, CESTAT, Allahabad

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

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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

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

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. ST/144/2011-ST[SM] With
CROSS Application No. ST/CROSS/74/2012

(Arising out of Order-in-Appeal No. 218-ST/GZB/2010 dated 08/10/2010 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Meerut-I)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

M/s Pathak & Co. **Respondent**

Appearance:
Shri P. K. Singh, Superintendent (AR), for Appellant
None for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Date of Hearing & Date of Decision: 15/02/2017
FINAL ORDER NO. 70304/2017

Per: Anil Choudhary

The present appeal is filed by the Revenue against Order-in-Appeal No. 218-ST/GZB/2010 dated 08/10/2010 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Meerut-I. Whereby the Commissioner (Appeals) taking notice of the fact that the Order-in-Original was an ex-parte order, have noticed the facts in detail and also have noticed a number of case laws and accordingly set aside the Order-in-Original and remanded for re-adjudication.

2. The grievance of the Revenue in this appeal is that the Ld. Commissioner (Appeals) has incorrectly allowed the appeals of the parties by way of remand, despite the fact that the powers of remand of the Commissioner (Appeals) has been taken away by amending Section 35A with effect from

11/05/2001. Under the notes to clause 122 of the Finance Bill 2001, it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (Appeals) to remand the matter back to the Adjudicating Authority for fresh adjudication. The Revenue have, further, relied on Board Clarification F. No. 275/34/2006-CX-8A dated 18/02/2010, wherein the ruling by Hon'ble Supreme Court in the case of MIL India Ltd. *Versus* Commissioner of Central Excise, Noida reported at 2007 (210) E.L.T. 188 (S.C.) was referred, that power of remand have been taken away. The ld. Commissioner (Appeals) have observed that – "Being aggrieved by the impugned Order-in-Original the respondent-assessee has filed this appeal on the following main grounds as follows:-

> 5.1 I have carefully gone through the documents on record, memorandum of appeal and the submissions made at the time of personal hearing.
>
> 5.2 On a perusal of documents on record, it is clear that the appellants never submitted the following copies of the GAR-7/TR-6 Challans along with ST-3 return submitted to the department for the period from October, 2007 to March, 2008. It is also on record that the appellants did not submit these GAR-7/TR-6 Challans even after the issue of the Show Cause Notice dated 15/01/2009 and before adjudication of the case. The appellants have submitted copies of these GAR-

7/TR-6 Challans along with appeal papers for the first time. These copies of GAR-7/TR-6 Challans are dated 07/01/2008, 19/02/2008, 07/03/2008, 26/03/2008. I also observe from the impugned order that the appellants submitted 3 GAR-7 Challans dated 10/04/2008 along with the ST-3 return showing payment of service tax of Rs.99,970/- & Education Cess of Rs.2,995/- but the appellants did not submit these Challans which have been shown to be deposited prior to 10/04/2008 and no reason of non submission of Challans show to have been deposited prior to 10/04/2008, have been given in the appeal.

5.3 From the above, it is clear that these GAR-7/TR-6 Challans dated 07/01/2008, 19/02/2008, 07/03/2008, 26/03/2008 were not before the Original Authority while deciding the case. In the present case, the appellants have submitted copies of GAR-7/TR-6 Challans after a gap of more than two years. When the copies of GAR-7/TR-6 Challans have been submitted after a gap of more than two years when the appellants have stated to deposit the service tax & Education Cess and no reason of non submission of these GAR-7/TR-6 Challans have been given and the appellants for first time submitted copies of these GAR-7/TR-6 Challans before this Authority. In such a situation, it is necessary to verify the genuineness of the contention of the appellants with regard to deposit of Service tax & Education Cess by the appellants as per the copies of GAR-7/TR-6 Challans submitted by the appellants for the first time. The comments of the department submitted vide letter dated 30/09/2009 do not reveal that any verification has been done with regard to deposit of Service tax & Education Cess. Hence, in such a situation the proper course of action is that the matter be examined by the Original Authority."

3. Thus, I find, having considered the rival contentions and on perusal of records, after verifying the contention of the respondents with regard to deposit of Serve tax & Education Cess vide GAR-7/TR-6 Challans dated 07/01/2008, 19/02/2008, 07/03/2008, 26/03/2008, it was felt necessary to give due opportunity to the respondents to substantiate their claim. I find it just and proper to uphold the order of remand by the Commissioner (Appeals). Accordingly, the appeal filed by Revenue is dismissed with directions to the Adjudicating Authority to re-hear the appellant after providing sufficient opportunity of hearing.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
03/04/17
सहायक पंजीकार / Asstt. 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