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: 16/08/2017

To

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

Final Order No. A/70784/2017-SM[BR] dated 28/07/2017

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
1	E/1061/2011	**AJAY INDUSTRIAL COPORATION** 20/11,Site IV, Sahibabad, Distt-Ghaziabad.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To
3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/1061/2011-EX[SM]

(Arising out of Order-in-Appeal No. 200-CE/GZB/2008 dated 30/09/2008 passed by Commissioner of Central Excise (Appeals), Ghaziabad)

M/s Ajay Industrial Corporation **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 28/07/2017

FINAL ORDER NO. 70784/2017.........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 200-CE/GZB/2008 dated 30/09/2008 passed by Commissioner of Central Excise (Appeals), Ghaziabad.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Hand Pump Sets & Accessories. As per the provisions of Service Tax Rules, 1994 they paid Service Tax on amounts of commission paid to foreign parties who did not have their offices situated in India. In other words, they paid Service Tax under reverse charge mechanism. The goods were exported and appellant filed

rebate claim of Rs.8,84,750/- on 23/08/2007. The said rebate claim was filed before the Assistant Commissioner, Central Excise, Division-III, Ghaziabad. The ld. Assistant Commissioner had offered them personal hearing on 25/01/2008. After that, the appellants submitted before Original Authority that by mistake they titled said the application as rebate of Service Tax and further requested that their application may be treated as claim eligible under Cenvat Credit Rules and also that may be treated as rebate of Service Tax for the service received for export goods under Rule 18 of Central Excise, 2004 read with Cenvat Credit Rules. The Original Authority has held that the said case does not come under the purview of the provisions of Export of Service Rules, 2005 nor under Rule 18 of Central Excise Rules, 2004 and, therefore, the said rebate claim of Rs.8,84,750/- was rejected. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal No. 200-CE/GZB/2008 dated 30/09/2008 and dismissed the appeal. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant who has submitted that it is an admitted fact that Service Tax was paid by them as recipient of service on reverse charge mechanism and they were entitled for Cenvat credit of the said Service Tax paid and that majority of the goods

manufactured by them were exported and such Service Tax could not be utilized by them by taking credit of the same in their Cenvat account and they were entitled for the refund of same under Rule 5 of Cenvat Credit Rules, 2004 but by mistake said application submitted on 23/08/2007 was titled as "Rebate Claim" and also that the fault continued even in the written submission dated 25/01/2008 because in that written submission also there was mixing up of Cenvat Credit Rules & Central Excise Rules and further, submitted that in fact, they were entitled for the refund of Rs.8,84,750/- which was paid as Service Tax as recipient of service and the goods were exported and they were not in a position to utilize the said Service Tax paid on input service and therefore, they were eligible for Refund under Rule 5 of Cenvat Credit Rules, 2004 that the defects in the application are curable and due to defect in the application substantial benefit cannot be denied.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal No. 200-CE/GZB/2008 dated 30/09/2008.

5. Having considered the rival contentions and on perusal of the facts on record, I find that there is no dispute that the said amount of Rs.8,84,750/- was paid by the appellant as Service Tax on the input service and they were eligible for availment of Cenvat credit of the same. Therefore, it is apparent that they were eligible for refund of said claim of

Rs.8,84,750/- under Rule 5 of Cenvat Credit Rules, 2004 and that the defects in the said application dated 23/08/2007 which continued even through the written submission dated 25/01/2008 cannot debar the appellant from the substantial benefit allowed by the law. I, therefore, set aside both impugned Order-in-Original & Order-in-Appeal and allow appeal filed by the appellant and direct the Original Authority to grant refund of Rs.8,84,750/- to the appellant under Rule 5 of Cenvat Credit Rules, 2004 within a period of 30 days after receipt of copy of this order.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari