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: 04/05/2017

To

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

Final Order No. ST/A/70441/2017-CU[DB] dated 18/04/2017

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/1332/2011	**MICROMATRIC GRINDING TECHNOLOGIES LTD.** C-27 AND 28, MEERUT ROAD, INDL. AREA, 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):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, 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, 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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : ST/1332/2011-CU[DB]

Arising out of OIA No. 76-ST/GZB/2011-12 dated 30.05.2011 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad.

M/s. Micromatic Grinding Technologies ...APPELLANT

VERSUS

Commissioner of Central Excise, Ghaziabad ...RESPONDENT

APPEARANCE

Shri Atul Gupta, Advocate for the appellant.
Shri Pawan Kumar Singh, (Supdt.) A.R. for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 18. 04. 2017

FINAL ORDER NO.- 70441/2017

Per Mr. Anil G. Shakkarwar :

The present appeal is directed against Order-in-Appeal No. 76-ST/GZB/2011-12 dated 30.05.2011 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad.

2. The brief facts of the case are that the appellants were marketing the goods of its foreign clients in India and was receiving commission on the same. They were also providing after sales service to their foreign clients and they have paid Service Tax on after sale service. The present dispute is regarding the liability of Service Tax on the commission so received for obtaining orders for foreign clients i.e. in other words marketing in India the goods manufactured by foreign clients. Revenue sought information from the appellant which was submitted through letter dated 25.09.2009. On the basis of information submitted through letter dated 25.09.2009, appellant was issued with a show cause notice dated 20.10.2009 wherein it was contended by Revenue that appellant had received commission of Rs.95,06,981/- during the financial year 2008-09 and it was contended by Revenue that the said commission was classifiable under Business Auxiliary Services and the same was ~~classifiable~~ chargeable to Service Tax. Therefore, the appellants were called upon through the said show cause notice to classify as to why Service Tax of Rs. 11,04,729/- should not be recovered from them for the financial year 2008-09 under Section 73 of the Finance Act, 1994. On contest, the said show cause notice was adjudicated through Order-in-Original No. 15/ADC/ST/GZB/2010 dated 22.11.2010 where Original Authority confirmed the demand and impose penalty under Section 76. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Before the Learned Commissioner (Appeals), the appellant submitted that

the commission was received by them in convertible foreign exchange and therefore the activity was export of service and hence they were not liable to pay Service Tax. Learned Commissioner (Appeals) did not appreciate the contention and reject the appeal and upheld the said OIO dated 22.11.2010. Aggrieved by the said OIA, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. He has submitted a copy of letter dated 25.09.2009 wherein appellant had submitted that the service provided by them was not liable to Service Tax under Business Auxiliary service as they were providing service to foreign clients and his activity amounted to export of service. He has further submitted that they had submitted entire documentary evidence before learned Commissioner (Appeals) establishing realization of convertible of foreign exchange which is once again submitted as Annexure-9 to the present appeal

4. Heard learned A.R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records it is noticed that the said show cause notice dated 20.10.2009 makes a reference to appellant's letter dated 25.09.2009, but it utilized selected information given therein for framing of charges against the appellant and chose to ignore certain part submitted therein. The appellant submitted through the said letter dated 25.09.2009 that they were providing service to foreign clients and their activity amounted to export of service. Such aspect

was not examined and the said show cause notice dated 20.10.2009 was issued wherein nowhere it was established that the commission received was in INR. We, therefore, do not find the said show cause notice sustainable. In view of the same we allow the appeal. The appellant shall be entitled for the consequential relief, if any, as per law.

(Pronounced and dictated in the open Court)

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

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

Patel/-

प्रमाणित प्रति/Certified True Copy
09/05/2018
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001