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/70303/2017-SM[BR] dated 27/03/2017

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/1558/2010	ISGEC JOHN THOMPSON (A UNIT OF THE SARASWATI INDUSTRIAL SYNDICATE LTD.) A-4, SECTOR-24, NOIDA-201301
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. ST/1558/2010-ST[SM]

(Arising out of Order-in-Appeal No. 255/ST/APPL/NOIDA/2010 dated 13/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s ISGEC JOHN THOMPSON **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Atul Gupta, Advocate, for Appellant
Shri D. K. Deb, Assistant Commissioner, (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 20/01/2017

FINAL ORDER NO...70303/.2017.......

Per: Anil Choudhary

M/s ISGEC John Thompson has preferred this appeal against the Order-in-Appeal No. 255/ST/APPL/NOIDA/2010 dated 13/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The appellant is engaged in the business of rendering erection, installation and commissioning services to its customers. The appellant receives various services from its contractors and uses the same for providing erection and commissioning services to its customers.

3. The appellant was awarded a contract for supply of boiler machinery and erection thereof from M/s White Nile Sugar Company Ltd., Sudan. Appellant engaged an Indian Sub-contractor – M/s Ayoki Fabricon Pvt. Ltd., for undertaking erection work at the Customer's site at Sudan.

4. The appellant received an Amount of Rs.27,12,23,443/- (Euro 47,27,100/-) from the foreign company, towards 10% of the value of the Contract as advance. The said amount included amount towards erection and commissioning service. Accordingly, the appellant made advance payments to the Sub-contractor in the months of February, 2008 & February, 2009 towards execution of the said contract. This payment was made to M/s Ayoki Fabricon Pvt. Ltd., against the invoices, in which the service tax along with Education Cess totaling Rs.38,55,904/- was charged.

5. The appellant filed two rebate claims on 06/02/2009 & 18/06/2009 under Notification No. 12/2005-ST in form ASTR-2 as the output services were exported to Sudanian Company (M/s White Nile Sugar Company Ltd.).

6. Two Show Cause Notices dated 06/10/2009 were issued to the appellant proposing to deny the rebate claims on the ground that the requirement to file declaration in terms of Notification 12/2005-ST were not complied and documentary evidence to the effect that the service tax, has been paid on input services, were not adduced.

7. The appellant submitted the reply on 15/12/2009, contesting the allegations in the Show Cause Notice dated 06/10/2009.

8. The Deputy Commissioner, Customs & Central Excise, Noida vide Order-in-Original No. 89-90/R/N-III/2010 dated 31/03/2010 rejected the rebate claim of the appellant holding that – (i) there is nothing on record to show that services were actually exported; (ii) invoice and FIRC of realization of advance payments are not conclusive evidence of export of the subject taxable services & (iii) the realization of export proceeds is not complete until realized in full on completion of the said taxable service.

9. On appeal, the ld. Commissioner (Appeals) vide Order-in-Appeal No. 255/ST/APPL/NOIDA/2010 dated 13/08/2010 rejected the appeal of the appellant by upholding the Order-in-Original dated 31/03/2010.

10. Against the same, the appellant has preferred the present appeal before this Tribunal.

11. The ld. Counsel on behalf of the appellant, submits that the rebate claims have been granted by the Department for the subsequent period, vide Orders-in-Original No. 66/R/N-III/2011 dated 18/04/2011 & 67/N-III/2011 dated 18/04/2011. He further submits that the project is now fully completed and whole amount against the contract has been realized. He relied on the C. A. Certificate dated 11/01/2017.

12. The ld. D. R. relied on the impugned Order-in-Appeal.

13. Heard both sides and perused the appeal records and documents submitted by the appellant. In view of the fact, that the Department allowed the rebate claimed in respect of the same contract for the subsequent period, and the fact that the whole amount pertaining to execution of the contract, out of India, is already received after the completion of the work, I set aside the impugned Order and remand the matter back to the Adjudicating Authority for verification of the documents and for taking a fresh decision regarding rebate claim of the appellant.

14. Accordingly, the impugned Order is set aside and appeal is allowed by way of remand to the Original Authority, for considering the issue afresh, particularly in view of the subsequent Order-in-Original dated 18/04/2011.

(Dictated and pronounced in Court)

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

Ansari