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: 26/12/2017

To

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

Final Order No. ST/A/71903/2017-CU[DB] dated 12/10/2017

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/2172/2012	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, (UP) - 208005
		Name and Address of Respondent
2		Gupta Overseas Near Tube Colony, Bye Pass, Agra (UP)

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

**JATIN MAHAJAN ADV
37, LGF, VINOBAPURI,
LAJPAT NAGAR-II NEW
DELHI-110024**

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/2172/2012-CU[DB]

(Arising out of Order-in-Appeal No. 171-ST/APPL/KNP/2012 dated 16/05/2015 passed by Commissioner of Customs & Central Excise (Appeals), Kanpur)

Commissioner of Central Excise & Service Tax, Kanpur **Appellant**

Vs.

M/s Gupta Overseas **Respondent**

Appearance:

Shri Mohd. Altaf, Assistant Commissioner (AR), for Appellant
Shri Jatin Mahajan, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision 12/10/2017
FINAL ORDER NO. 71903/2017

Per: Anil G. Shakkarwar

The present appeal filed by Revenue is directed against Order-in-Appeal No. 171-ST/APPL/KNP/2012 dated 16/05/2015 passed by Commissioner of Customs & Central Excise (Appeals), Kanpur.

2. The brief facts of the case are that the respondent initially paid Service Tax in respect of services which were performed in the foreign country. Subsequently, they submitted an application dated 19/05/2007 received on 31/05/2007 for refund of said Service Tax paid to the tune of Rs.7,43,039/-. The Original Authority rejected the refund. Being aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal dated 16/05/2015. The grounds of appeal before

ld. Commissioner (Appeals) was that the entire service was performed outside India and no part of the service was performed in India and therefore since the service was performed beyond Taxable Territory, service was not leviable on the same. The ld. Commissioner (Appeals) has held that there is nothing on record to show that the service or a part of the service has been performed in India and therefore, he has held that in the present case, Service Tax was not payable by the respondent since the entire service was provided outside taxable territory i.e. outside India, & Service Tax was not leviable. Being aggrieved by the said order, Revenue is before this Tribunal.

3. The grounds of appeal filed by Revenue is as follows:-

> "Fashion Designing Services as defined in Section 65(105)(zv) of the Finance Act, 1944 is specified under Rule 3(ii) of Taxation of Services (Provided from Outside India & Received in India) Rules, 2006 and is taxable under Section 66A of the Finance Act, 1994. The Appellate Authority has mis-interpreted the proviso to Rule 3(ii) and allowed exemption to the party. This proviso is applicable to taxable services which are partly performed in India which is not in this case as the Commissioner (Appeals), Kanpur categorically held that "there is nothing on record to show that the service or a part of the service has been performed in India."

4. Heard the ld. A. R. for Revenue, who has presented the grounds of appeal, as hereinabove.

5. Heard the ld. Counsel for the appellant, who has submitted that it is contention of Revenue that unless part of the service is provided in India, the proviso to said Rule 3(ii) of Taxation of Services (Provided from Outside India & Received in India) Rules, 2006 is not applicable.

6. Having considered the rival contentions and on perusal of the facts on record, we find that through the said Rule 3(ii) of Taxation of Services (Provided from Outside India & Received in India) Rules, 2006 certain services were deemed to have been performed in India even if they were partly performed in India and partly performed from outside India and that the service received by the respondent was covered under Rule 3(ii) of Taxation of Services (Provided from Outside India & Received in India) Rules, 2006 as held by ld. Commissioner (Appeals) that "there is nothing on record to show that the service or a part of the service has been performed in India." Therefore, we do not find any force in the grounds of appeal presented by Revenue. In view of the said finding we ~~dismissed~~ dismiss the appeal filed by Revenue. The respondent shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
18/01/18

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