FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 27/09/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71149/2017-CU[DB] dated 25/07/2017

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/22/2011	Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH 201307
			Name and Address of Respondent
2			MS SAMSUNG INDIA ELECTRONICS PVT LTD B-1, SECTOR-81, PHASE-II,, NOIDA,,UP

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. I

APPEAL No.ST/22/2011-CU[DB]

(Arising out of Order-in-Appeal No. 304/ST/APPL/NOIDA/10 dated 30/09/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Customs, C.E. & S.T., Noida **Appellant**

Vs.

M/s Samsung India Electronics Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR) for Appellant
Ms Natasha Sarkar & Shri Atul Gupta, Advocates, for Respondent

CORAM:

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

Date of Hearing : 25/07/2017
Date of Decision : 25/07/2017

FINAL ORDER NO- 71149/2017...........

Per: Anil Choudhary

The present appeal is filed by the Revenue against Order-in-Appeal No. 304/ST/APPL/NOIDA/10 dated 30/09/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The issue in this appeal filed by the revenue is whether the learned Commissioner (Appeals) vide the impugned order, have rightly remanded the matter to the Deputy Commissioner to hear the respondent-assessee

and disposed of the objections with respect to the rebate claim, in accordance with law.

3. Heard the parties.

4. We find that the learned Commissioner (Appeals) have recorded the following observations and findings:–

> "8. I proceed to take up the case for final decision. It is observed that the rebate claim was rejected by the adjudicating authority without giving the appellant an opportunity to present their case. As evident, the appellant were asked to appear for personal hearing either on 29.04.2010 or 30.04.2010 through the letter dated 27.04.2010 which too was admittedly not received by the appellant. Thus, the appellant was basically provided a single opportunity of personal hearing and that too with practically no notice. The manner adopted was abrupt ignoring all tenets of natural Justice. The apparent hurry of the adjudicating authority was most uncalled for. I find that the principles of natural justice are the basic cornerstone of our judicial system and are inbuilt in any sustainable procedure. There is substance in the submissions of the appellant as for as it relates to the violation of the principles of natural justice.
>
> 8.2 I find that the appellant have fulfilled the substantive conditions which are required to be fulfilled in terms of the Notification No.11/2005-ST as they have exported the taxable service in terms of Rule 3 of the said rules, received payment for export of such taxable service in convertible foreign exchange and the service tax and cess has been paid on the taxable service exported. The documents put before me clearly indicate that the FIRC, submitted by the appellant, bears the name of Samsung Electronics and the remittances are made through Bank of America, New York. Thus, the finding of the adjudicating authority that the FIRCs contain the name of Samsung, New York and the

link between the FIRCs and the services exported could not be established, is not correct. The plea of the appellant about the classification of the services exported and its export under the Rules too do not appear to be devoid of merit. The Adjudicating authority was thus, nowhere in the position to judiciously decide the aspect of admissibility of the rebate claim in the absence of any clarification/submission from the appellant.

8.3 In view of the foregoing discussion, I am left with no alternative, but to remand the matter to the adjudicating authority for de-novo proceedings with the *"direction that the rebate claim may be checked in the light of the procedure, conditions etc. provided in the relevant Notification No.11/2005-ST dated 19.04.2005, Rule-3 of the 'Export of Service Rules, 2005' and pass a well reasoned order incorporating the rationale for observations made in respect of the admissibility of the rebate claim after observing the 'principles off natural justice' within a month of receipt of this order."*

5. We find that the Order-in-Original was an ex-parte order and the respondent-assessee had not appeared before the Dy. Commissioner and the learned Dy. Commissioner had disposed of the appeal, ex-parte ~~being heard~~. We also find that the Commissioner (Appeals) found on most of the issues that the appellant-assessee is entitled to rebate claim and have remanded, for examination on the issue of classification of services exported and its export under Rules, which relates to the admissibility of the rebate claim. Further, we find that the Hon'ble Gujarat High Court in the case of Commissioner of Service Tax Vs Associated Hotels Ltd. reported at 2015 (37) S.T.R. 723

(Guj.), have held distinguishing the ruling of the Apex Court in the case of M/s MIL India Ltd. that in absence of any specific bar on remand, in its opinion, the ample powers flowing from Sub-section (4) of Section 85 of the Finance Act, the Commissioner (Appeals) is vested with power to even remand the proceedings. If proper enquiry is not conducted or the proceeding is decided ex-parte, it would not be necessary in every case that the Commissioner (Appeals) convert itself to the adjudicating authority and conduct the entire inquiry necessary for proper adjudication of the issues. In such a case, the Commissioner (Appeals) may as well decide to remand the proceedings and as per the Hon'ble High Court. There are no limitations in powers, to do so.

6. We find that the issue herein is covered squarely by the ruling of Hon'ble Gujarat High Court in the case of Associated Hotels Ltd. (supra). The same have been followed by a co-ordinate bench of this Tribunal in the case of Commissioner of Central Excise, Raipur Vs C.G. State Civil Suppliers Corporation Ltd. reported at 2016 (42) STR 351 (Tri.-Del.) and also in the case of Commissioner of Central Excise, Raipur Vs Anand Colour Lab reported at 2014 (36) S.T.R. 915 (Tri.-Del.) wherein the Original Authority ~~were~~ had dismissed objections, against

direction, by the Commissioner (Appeals), against order of remand.

7. Accordingly, we dismiss this appeal and direct the Adjudicating authority to pass a reasoned order, as directed by the Commissioner (Appeals) after providing an opportunity of hearing to the assessee, preferably ~~being heard~~ within a period of 60 days, from the date of receipt/service of a copy of this order. We also direct the respondent-assessee to appear before the concerned Original authority, with a copy of this order and seek an opportunity of hearing.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
13/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
M. G. MARG,ALLAHABAD-211001