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: 20/03/2017

To

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

Final Order No. A/70271/2017-SM[BR] dated 15/03/2017

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/678/2011	C.C.E & ST, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		SURYA TRANSFORMERS 71-A, Dada Nagar, Kanpur.,,

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

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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/678/2011-ST[SM]

(Arising out of Order-in-Appeal No. 44-ST/APPL/KNP/2011 dated 21/02/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise, Kanpur — **Appellant**

Vs.

M/s Surya Transformers — **Respondent**

Appearance:

Shri D K. Deb, Assistant Commissioner (AR) — for Appellant
Shri Vineet Kumar Singh, Advocate, — for Respondent

CORAM:

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

Date of Hearing : 15/03/2017
Date of Decision : 15/03/2017

FINAL ORDER NO-70271/2017...........

Per: Anil Choudhary

The present appeal is filed by the revenue against Order-in-Appeal No. 44-ST/APPL/KNP/2011 dated 21/02/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The issue in this appeal is, under the facts and circumstances that the respondent assessee engaged in repair and maintenance of old and damaged transformers have admittedly under the terms of composite contract with the Electricity Board etc. have also supplied materials like HV/LV leg coils, Transformer oil and supply of items and have paid service tax on the labour component, further admitted facts are that the appellant have paid Sales Tax/VAT on the material component, whether the impugned order of Commissioner (Appeals) holding that the appellant is liable to pay service tax, only on the labour component, whether the same is correct or untenable.

3. Heard the parties.

4. I find that the issue in this appeal is squarely covered by the Ruling of Hon'ble Allahabad High Court in the case of Commissioner of Customs and Central Excise Vs J.P. Transformers reported at 2014 (36) STR 961 (All.), wherein the issue was whether the CESTAT has erred in holding that service tax is not required to be paid on goods used in repairing process on which Excise duty and VAT has been paid on the value of the said goods, ignoring the fact that as per the contract, the assessee was under obligation to replace the damaged parts and to maintain the transformer in a proper working condition.

The Hon'ble High Court taking notice of the finding of this Tribunal– that the agreements and invoices reflected the cost of materials and labour separately, and that the assessee had duly paid VAT/CST and excise duty on the goods sold, is not in dispute. It was in this background that it was held that no service tax would be leviable on the value of the materials.

4. Accordingly, following the Ruling of Hon'ble Allahabad High Court in the case of JP Transformers (supra), there is no impropriety in the order of the learned Commissioner (Appeals) holding that the appellant is not liable to pay service tax on the material component used in repair and maintenance of Transformers. Accordingly, the appeal filed by revenue is dismissed. The respondent-assessee will be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

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

akp

प्रमाणित प्रति / Certified True Copy
23/03/17
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