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: 06/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70290/2018-SM[BR]** dated **12/01/2018**

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/70767/2017	**Suruchi Foods Private Limited** Plot No.-482-483,delhi Agra Road,nh-2,village Dautana,tehsil-chhata,koshikalan MATHURA UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

ARCHANA JAIN & CO
F-54,KIRTI NAGAR,NEW DELHI-110015

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/70767/2017-ST[SM]

(Arising out of Order-in-Appeal No. 225-ST/APPL-LKO/LKO/2017 dated 12/09/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Suruchi Foods Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise & S.T., Lucknow	**Respondent**

Appearance:

Ms Archana Jain, Chartered Accountant,	for Appellant
Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR),	for Respondent

CORAM:

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

Date of Hearing	:	12/01/2018
Date of Decision	:	12/01/2018

FINAL ORDER NO-70290/2018............

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 225-ST/APPL-LKO/LKO/2017 dated 12/09/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. Brief facts of the case are that the appellants were manufacturer and processor of Weaning Food and had supplied the entire quantity to State Government of Uttar Pradesh. They paid service tax amounting to Rs.26,08,539/- during the period from June, 2014 to February, 2015 in

respect of service tax on 'Goods Transport Agency Service' as service recipient under the provisions of reverse charge mechanism. Subsequently, they realized that transportation of food was covered by Sl. No.21 (d) of Notification No.25/2012-ST dated 20/06/2012 w.e.f. 01/07/2012. Therefore, they filed claim for refund of said amount of Rs.26,08,539/- on 03/07/2015. The said claim was rejected through Order-in-Original dated 17/12/2015. The Original Authority held that the appellant failed to prove that the burden of such duty has not been passed on to the buyers and therefore, the said claim for refund was rejected on the ground of unjust-enrichment under Section 11B of Central Excise Act, 1944. Aggrieved by the said order, appellant preferred appeal before Learned Commissioner (Appeals), who has decided the appeal through the impugned Order-in-Appeal. The Learned Commissioner (Appeals) has dismissed the appeal by passing following order:-

"3. I have carefully gone through the records of the appeals, Order-in-Original, Show Cause Notice and submissions put forth at the time of personal hearing. I observe that refund claim of the Appellant was rejected as they failed to prove that incidence of Service Tax has not been passed on to the buyers.

4. I find that exemption of Service Tax on transportation of food stuff is not challenged by the Revenue. The Appellant has contended that they have paid the Service Tax inadvertently over and above the rate of transportation fixed by the buyer i.e. Rs.1100/- per M.T. In support of their contention they have submitted some of the invoices wherein freight has been charged @ Rs.1100/- per M.T.

5. Section 11B of the Central Excise Act, 1994, made applicable to Service Tax matters, provides that the applicant has to establish *that the incidence of such duty had not been passed on by him to any other persons.*

6. *From the case record it is found that the above legal obligation has not been fulfilled by the applicant neither at the adjudication stage nor at appellate stage. Chartered Accountant's certificate to the effect that burden of the claimed amount has not been passed on and that the said amount is shown as recoverable in balance sheet could be treated as compliance of the requirement of Section 11B, as made applicable to service tax matters. This view has been held by Hon'ble CESTAT in the case of Wind World India Ltd. Vs CC Mumbai, reported at 2015 (324) E.L.T. 196 (Tri.-Mumbai). Further, in the case of Hindustan Petroleum Corporation Ltd. Vs CCE Mumbai II, reported at 2015 (317) E.L.T. 379 (Tri.-Mumbai), it has been held that when refund amount due is not reflected in the books of accounts as "claims receivable", and the same was treated as expenditure, the claimant cannot be said to have passed the test of unjust enrichment.*

7. *However, the claimed amount of service tax, which has been paid without authority of law, is refundable and amount shall be credited to the fund in terms of Section 11B(2) of Central Excise Act, 1944, as made applicable to service tax matters, after calculations of the amount by jurisdiction Deputy/Assistant Commissioner."*

Aggrieved by the said order, appellant preferred appeal before Learned Commissioner (Appeals).

3. Learned Chartered Accountant for appellant submits that after passing of the impugned Order-in-Appeal, they have been issued with a certificate on 29/11/2017 by Chartered Accountant, certifying that appellant did not recover service tax amount in respect of freight recovered for supply of Weaning Food for Government of Uttar Pradesh in terms of contract. Further, appellant has relied on the precedent decision of this Tribunal in the case of Commissioner of

Central Excise, Pune-III Vs M/s Cummins India Ltd. reported at 2007-TIOL-1959-CESTAT-MUM, wherein the certificate issued by Chartered Accountant was produced to establish that the duty incident was not passed and the same was accepted.

4. Learned A.R. for Revenue has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions, I find that the Lower Authorities did not have the benefit of said precedent ruling of this Tribunal nor they had the advantage of said certificate dated 29/11/2017 issued by Chartered Accountant. I, therefore, remand the matter back to the Learned Commissioner (Appeals) with a direction to examine the issue in the light of said precedent decision of this Tribunal by taking into consideration the said certificate dated 29/11/2017 issued by Chartered Accountant.

6. Accordingly, by setting aside the impugned Order-in-Appeal matter is remanded in above terms.

(Dictated & Pronounced in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

प्रमाणित प्रति/Certified True Copy

27/02/18

akp

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
39, एम. जी. मार्ग, इलाहाबाद-211001
39 M. G. MARG, ALLAHABAD-211001