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: 19/05/2017

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

Final Order No. A/70449-70451/2017-SM[BR] dated 28/04/2017

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/759/2011	**Orient Craft Limited (corp)** 7-d, Maruti Industrial Complex, Sector-18 Gurgaon HARYANA
2	ST/760/2011	**Orient Craft Limited (corp** 7-d, Maruti Industrial Complex, Sector-18 GURGAON HARYANA
3	ST/1038/2010	**C.C. & C.E. & S.T.-Noida** C-56/42, Sector-62, Noida- 201307

	Name and Address of Respondent
4	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
5	C.C. & C.E. & S.T.- Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH- 201307
6	ORIENT CRAFTS LTD. D-3, SECTOR-59, NOIDA. ,, ,

Other Appellants and Respondents as per Annexure
Copy To
7Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

8 Bar Association, CESTAT, Allahabad

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

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/1038/2010 & ST/759-760/2011-ST[SM]

(Arising out of Order-in-Appeal No. 30-31/ST/APPL/Noida/2011 dated 23/02/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

M/s Orient Craft Limited (Corp) **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida **Respondent**

Appearance:

Ms. Stuti Saggi (Proxy Counsel), for Appellant
Shri Rajeev Ranjan Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 28/04/2017

FINAL ORDER NO...70449-70451/2017

Per: Anil Choudhary

The issue in this appeal is, whether regarding rejection of refund claim under Notification No. 41/2007-ST dated 06/10/2007.

2. The brief facts of the case are that the appellant - Orient Craft. Ltd, are engaged in the manufacture and export of Readymade Garments & Textile Made Ups. The appellant filed refund claim of Service tax paid on specified services utilized in the course of export as specified under Notification No. 41/2007 - ST dated 06/10/2007 being two separate claims for the period July, 2008 to September, 2008 for Rs.47,598.94/- and for October, 2008 to December, 2008

-AC

Rs.1,50,846/-. The said claims were rejected vide OIO dated 03rd November, 2009 & 30th November, 2009 respectively. Being aggrieved the appellant-assessee preferred appeal before ld. Commissioner (Appeals) who vide OIA dated 07/04/2010 allowed the appeal by way of remand. Revenue preferred appeals before this Tribunal against the order of remand questioning the jurisdiction of the Commissioner (Appeals). This Tribunal vide Final Order No. ST/97/2010 dated 19/11/2010 set aside the common Order-in-Appeal and remanded the matter back to the Commissioner (Appeals) to deal with the issue of refund claim in accordance with provisions of law.

3. Thereafter the ld. Commissioner (Appeals) vide a common Order-in-Appeal No. 30-31/ST/APPL/Noida/2011 dated 23rd February, 2011 have been pleased to dismiss the appeals upholding the orders of rejection of the refund claims.

4. Being aggrieved the appellant is in appeal before this Tribunal against rejection of their two refund claims. The ld. counsel for the appellant urges that the ground of rejection mentioned in the impugned order states that the refund cannot be considered when goods have been exported, claiming drawback. So far this ground is concerned, the ld. counsel draws my attention to Notification No. 80/2006-Cus. (NT) dated 13/07/2006 which provides that the incidence of Service tax paid on input service used in manufacture of such goods has been factored in the All Industry Rate of Drawback,

calculation. Since the specified services on which a refund claim is made do not qualify to be considered as input service and the same are availed on or after the stage of clearance of the goods hence rejection of refund claim is bad. It is further pointed out that clause 1 (e) of Notification No. 41/2007, as amended, by the subsequent Notification No. 17 of 2009, the relevance of drawback claim for refund of Service tax paid has been omitted by the Revenue vide Notification No. 33/2008-ST dated 07/12/2008.

5. Having considered the rival contentions of this point that the issue is no more *res-integra*, I hold that the specified services for which refund is allowable under Notification No. 41/2007-ST dated 06/10/2007 as substituted and amended, read with Notification No. 33/2008-ST dated 07/12/2008 read with Notification No. 80/2006-Cus. (NT) dated 13/07/2006, the refund of Service tax is available in spite of claiming drawback.

6. Therefore, in view of the finding recorded, both the appeals are allowed and the impugned orders are set aside. The appellant will be entitled to refund under Notification No. 41/2007-ST dated 06/10/2007. The Adjudicating Authority is directed to grant the refund within a period of 60 days along with interest as per rules from the date of receipt of a copy of this order.

Appeal No. ST/1038/2010 filed by Revenue is dismissed as infructuous.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
09\05\2017
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