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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70189/2017-SM[BR] dated 14/02/2017

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/857/2011	C.C.E, ALLAHABAD 38,M.G.Marg, civil Lines, Allahabad
		Name and Address of Respondent
2		I.K. FOOD PRODUCTS, SITE 01, INDUSTRIAL AREA, HARIPUR, JALALABAD, FAIZABAD (U.P.),,

Copy To

3Advocate(s) / Consultant(s):

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/857/2011-ST[SM]

(Arising out of Order-in-Appeal No. 67/ST/Appl/Alld./2010 dated 10/03/2011 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

Commissioner of Central Excise, Allahabad **Appellant**

Vs.

M/s I. K. Food Products **Respondent**

Appearance:

Shri D. K. Deb, Assistant Commissioner. (AR), for Appellant
None for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 14/02/2017

FINAL ORDER NO. 70189/2017

Per: Anil Choudhary

The present appeal is filed by the Revenue against Order-in-Appeal No. 67/ST/Appl/Alld./2010 dated 10/03/2011 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad. Whereby the Commissioner (Appeals) taking a notice of the fact that the Order-in-Original was an ex-parte order, have taken notice of the facts in detail and also have noticed a number of case laws and accordingly set aside the Order-in-Original and remanded for re-adjudication.

2. The ground of the Revenue in this appeal is that under amended Sub-section (3) of Section 35A of the Central Excise

AC

Act, 1944, the Commissioner (Appeals) no longer have got 'power to remand' the matter back to the Adjudicating Authority. The Revenue have, further, relied on Board Clarification F. No. 275/34/2006-CX-8A dated 10/02/2010, wherein the ruling by Hon'ble Supreme Court in the case of MIL India Ltd. *Versus* Commissioner of Central Excise, Noida reported at 2007 (210) E.L.T. 188 (S.C.) was referred emphasizing that power of remand have been taken away.

3. Having considered the rival contentions and on perusal of records, I find it just and proper to uphold the order of remand by the Commissioner (Appeals). Accordingly, the appeal filed by Revenue is dismissed with directions to the Adjudicating Authority to re-hear the appellant, after providing sufficient opportunity of hearing, pass a fresh order in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25/02/17
सहायक पंजीकार / Asst. 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