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: 07/03/2017

To

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

Final Order No. A/70242/2017-SM[BR] dated 06/03/2017

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/CROSS/51468/2015, ST/Stay/53203/2014	ST/52843/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
		Name and Address of Respondent
2		D K Electricals Prop Sh Dilip Kumar Sharma,,Chopan Road,obra,, SONEBHADRA, ,UP

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

SITA RAM CONSULTANT
C/O R.R.BANOUDHA, 3B/1A, TEJ
BAHADUR SAPRU 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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

SINGLE MEMBER BENCH

ST/Cross/51468/2015
ST/Stay/53203/2014
Appeal No. ST/52843/2014-CU[SM]

Dated of Hearing/decision: 05/9/2016

[Arising out of Order-in-Appeal No. 172/ST/ALLD/2013 dated 31/12/2013 passed by Commissioner, Central Excise & Service Tax, Allahabad, (U.P.)]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

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

C.C.& C.E. & S.T.-Allahabad Appellant

Vs.

D.K. Electricals Respondent

Appearance:
Present for the Appellant: Shri Rajeev Ranjan (Joint Commissioner) AR
Present for the Respondent: Shri Sita Ram (Consultant)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)

<u>Final Order No.</u> 70242/2016

Per: Anil Choudhary

1. The Revenue is in appeal against Order-in-Appeal dated 31/12/2013 whereby it has been held that the respondent assessee have admittedly used materials in the repair/rewinding and installation work done for the principal and accordingly the cost of the materials is transferred to their principal under accretion, relying on the ruling of honourable Supreme Court in the case of Imagic Creative Private Ltd. Vs. Commissioner of Commercial Taxes [2008 (9) STR 337 (SC)] and have accordingly held that no service tax is payable on the material component.

2. The revenue is in appeal on the ground that the total cost of repair package has been separately mentioned in different heads in details provided by the respondent and VAT has been paid by the respondent on cost of goods, but the said goods have actually not been sold to the buyer as the invoice has been raised for the work of repair done under complete contract and complete repair package cost has been charged by the parties. The Respondent was paying Vat on the cost of goods or materials and Service Tax only on the labour charges, thus have short paid tax.

3. Heard the parties

4. On perusal of the document of contract between the respondent and the principal, under the head service tax, it has been mentioned – service tax shall be paid extra as legally applicable. This charge shall be paid on 20% amount of the order/contract value. The contract further provides all copper scrap generated in the course of rewinding and/ or

repair shall be the property of the principal. Regarding sales tax under the head CST, is mentioned – inclusive. The learned Commissioner (Appeals) after appreciating the facts and considering the ruling's of honourable Supreme Court particularly, Imagic Creative Pvt. Ltd. (supra) have observed that Rule 67 of the Finance Act. 1994, itself recognises the fact that goods and materials would indeed be sold during the course of maintenance or repair. Reliance is also placed on the ruling of honourable Karnataka High Court in the case of Modi Xerox Ltd. versus State of Karnataka reported in 1999 (14) STC 424 (KAR) wherein it is held, in Annual Maintenance Contract the supply of materials can be considered a sale which are been affirmed by honourable Supreme Court. The ld. Commissioner also found that out of the gross amount received Rs.1,75,53,314/- during the period under dispute, the respondent paid service tax of Rs.7,64,879/- as against total calculated amount of service tax of Rs.18,15,437/- meaning thereby that respondent paid service tax on approximately 42% of the gross value of the contract value. It was also noticed that, as per the C.A. Certificate produced, cost of materials including VAT incurred by the respondent during the period of dispute is Rs.94,11,693/- which comes to around 56% of the total amount received minus the service tax paid. Thus the ratio of payment of service tax is about 40% of the gross receipts. Accordingly learned Commissioner (Appeals) held as follows: –

"I hold that in any Annual Maintenance Contract the materials and spare parts etc. which have been used in the course of the maintenance service are definitely to be considered as sold and when sales tax has been paid on the value of such goods, simultaneously one cannot charge them to be service tax. The certificate of Chartered Account furnished by the appellant also depicts that they have purchased the material utilized on payment of VAT. In view of these clear legal provisions, there is absolutely no justification for levy of service tax beyond 40% of the value of the total contact. I would like to state that the data provided by the appellant shows that the adoption of 40% of the value of the contract towards value of services rendered appears to be reasonable in the light of the payment of sales tax on the 60% value which has also been accepted. Therefore, the instant valuation and payment of service on 42% of Contract values cannot be said to be arbitrary. In these circumstances, I do not find any merit in the impugned Order-in-Original. Since, the demand of duty is not sustainable the demand of interest, penalty etc. also are not justified. Hence, I allow the appeals with consequential relief."

5. Under the aforementioned facts and circumstances, I find that the ld. Commissioner (Appeals) has rightly held that there is transfer of materials in the repair and maintenance done by the respondent assessee and accordingly no service tax is eligible on the same. Accordingly I dismiss the appeal of revenue and uphold the order in

appeal. The cross objection and stay application also stands disposed of.

(Dictated and pronounced in the open Court)

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

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
14/03/17
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