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: 20/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71102/2017-SM[BR] dated 07/09/2017

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/70854/2016	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
		Name and Address of Respondent
2		The India Thermit Corporation Ltd 84, 22, Fazal Ganj,,48-48a, Tilak Orad, Baluaghat Near Panchmuki Mandir,, KANPUR ,UTTA R PRADESH

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Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/70854/2016-ST[SM]

(Arising out of Order-in-Appeal No. 39/ST/Appeal/KNP/2016 dated 25/05/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

C.C.E. & S. T. - Kanpur **Appellant**

Vs.

M/s The India Thermit Corporation Ltd. **Respondent**

Appearance:

Shri Mohd. Altaf, Assistant Commissioner (AR), for Appellant
Shri Dinesh Kumar Singh, (Proxy Counsel) Advocate, for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing & Date of Decision : 07/09/2017

FINAL ORDER NO..71102/2017........

Per: Ashok Jindal

The Revenue is in appeal against the impugned order, wherein the ld. Commissioner (Appeals) allowed the refund to the respondent.

2. The brief facts of the case are that the respondent is a contractor and doing the activity/service of "Flash Butt Welding of Railway Joint of Pipes/Railway Line on Railway Contract. The Contract was inclusive of all taxes and duties. The respondent was under the premise that their activity falls under the category of "Commercial or Industrial Construction Services", was paying Service Tax thereon during the period

June, 2011 to January, 2012. Vide CBEC Circular No.137/185/2007-Cx.4 dated 06/02/2008, it has been clarified that the activity performing on account of Railway Contract, is exempted for Service Tax under the category of "Commercial or Industrial Construction Services". As respondent paid Service Tax and on realizing the fact that they are not required to pay Service Tax, therefore, the refund claim was filed which was rejected by the Adjudicating Authority but the ld. Commissioner (Appeals) allowed the refund claim.

2. Aggrieved by the said order Revenue preferred appeal before me.

3. The ld. A. R. for Revenue has submitted that as the services provided to railways were exempted from 06/02/2008 and the respondent chose to pay Service Tax. Furter, contended that the Service Tax has been recovered from the railways as same was included in the contract price. Therefore, they are not entitled for refund claim.

4. On the other hand, Mr. Dinesh Kumar Singh (Proxy Counsel) Advocate appeared on behalf of the appellant and sought adjournment but the matter was taken up for disposal.

5. On careful consideration of the facts on record, I find as per contract between railways and respondent, the prices of services rendered by the respondent are inclusive of all taxes and duties. In that circumstance, whatever Service Tax has

been paid by the respondent and the same has been borne by the respondent only. If no Service Tax would have been paid by the respondent, the value of service provided by the respondent was the same. Further, I find that it is an admitted fact that no Service Tax is payable on the service provided to the railways. In that circumstance, whatever Service Tax paid by the respondent, is not a Service Tax and the same is refundable to the respondent.

6. In the impugned order the ld. Commissioner (Appeals) examined the issue and allowed the refund claim to the respondent.

7. In these circumstances, I do not find any infirmity in the impugned order and the same is upheld. The appeal filed by the Revenue is dismissed.

(Dictated & Pronounced in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

Certified True Copy

29/05/17

Asstt. Registrar

C.E.S.T.A.T.

38, M. G. MARG, ALLAHABAD-211001

Ansari