

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALLAHABAD**

Dated: 28/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70053 /2015-DB dated 21/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

[Signature]
Asstt. Registrar
28.10.15

Application	Appeal	Name and Address of Appellant
E/55801/2014		ACCORD COMMUNICATION LTD MOHKAMPUR, PHASE-II DELHI ROAD, MEERUT (UP)

Name and Address of Respondent	
	CCE MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT (UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH PRAVEEN SHARMA, ADV
KF-84, KAVI NAGAR
GHAZIABAD (UP)..

- 4 Bar Association, CESTAT, Delhi
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3
- 7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17
- 8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, I-8, Sector-10, Faridabad 121003 (Haryana)
- 11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aftitya Enclave, Hyderabad - 38
- 13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
- 14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALAHABAD

Ex. Appeal No.55801/14

Arising out of OIA No.45/CE/MRT-I/2014 dated 22.05.2014 passed by
Commissioner of Central Excise (Appeals), Meerut I

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether His Lordship wishes to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental Authorities?

Yes

No

Yes

No

M/s Accord Communication Ltd.
...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut I

RESPONDENT (S)

APPEARANCE

Shri Parvin Sharma, Adv. for the Appellant (s)
Shri Ashok B. Kuligod, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 21.10.2014

Final ORDER NO. 70053/2014



Per Mr. Anil Choudhary :

The Appellant, M/s Accord Communication Ltd., is In Appeal against Order-in-Appeal No. 45/CE/MRT-1/2014 dated 22.05.2014 passed by Commissioner of Central Excise (Appeals), Meerut I, by which the appeal was rejected confirming the duty and penalty on the alleged clandestine removal.

2. Brief facts are that the appellants are engaged in the manufacture of EPBAX. A Supply Order No.1.17018/103(1)/PROC/DG-NDRF/2011 dated 15.12.2011 was received from National Disaster Response Force (Ministry of Home Affairs, Govt. of India, New Delhi). The said Order being erroneous, was cancelled vide Reference No.DEL/SOS/201112/39012 dated 15.12.2011 (same day) stating therein that the supply order of even date is cancelled due to error. Subsequently, rectified Purchase Order No.1.17018/103(1)/PROC/DGNDRF/2011 dated 29.12.2011, was issued for supply, wherein only difference was in the last items i.e. small EPBAX system. The rate of per unit of large EPBAX system is Rs.8805.30 and the rate per unit of small EPBAX system is Rs.4605.30. Thereafter, the appellant supplied the fabricated goods during the month of Feb. and March, 2012. Erroneously, the appellant in their Invoices made reference to the earlier cancelled Purchase Order dated 15.12.2011 and instead of raising the invoices for small EPBAX system, they raised the invoices for large EPBAX system. The appellant thus committed error in their invoices resulting into calculation of higher duty in excess, than payable. Higher duty was paid and also so mentioned in return, ER-I filed in the month of Feb. & March, 2012.

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Subsequently, buyers i.e. NDRF pointed out the mistake in the invoices. On the request of NDRF, the appellant took back the old invoices originally issued to NDRF and re-issued the invoices with the same invoice numbers giving the same date correcting the mistakes as is evident from the sample invoices produced during the course of hearing. Thereafter, the appellant filed refund claim for the excess duty paid of Rs.23,905/-. In response to the refund claim, the show-cause notice dated 20.02.2013 was issued stating therein that the appellant appeared to have clandestinely removed the goods twice on the same parallel number of invoices. The entire duty on the re-issued invoices (corrected invoices) amounting to Rs.1,38,194/- was demanded along with interest and penalty was also proposed under Rule 25 & 27 of the Central Excise Rules, 2002 read with Section 11A of the Central Excise Act, 1994.

3. The appellant contested the show-cause notice explaining therein that error was committed by them at the time of raising invoices, is that instead of raising invoices in respect of small EPBAX system, which were manufactured and supplied, wrong invoices for large EPBAX system were raised, which resulted in excess payment of excise duty amounting to Rs.23,905/-. It is further explained that the mistake occurred due to lack of co-ordination between the store department and the accounts department of the appellant. Reliance was also placed on a Certificate dated 21.3.2013 issued by Deputy Commandant (ADM), HQ, DG, NDRF, which reads as follows :

"This is to certify that M/s National Disaster Response

Force, New Delhi had issued supply order No.1-

17018/103(1)/PROC/DG-NDRF/2011 dated 15.12.2011 to M/s Accord Communication Ltd., Meerut for supply of EPABX. This supply order was cancelled on the same date vide letter No.Del/SOS/2011-12/39012 dated 15.12.2011. Thereafter, fresh supply order No. 1-17018/103(1)/PROC/DG-NDRF/2011/9044 dated 29.12.2011 was issued for supply of the EPABX systems. All the EPABX systems received by us as per the description and price as mentioned in the supply order No. 1-17018/103(1)/PROC/DG-NDRF/2011/9044 dated 29.12.2011 and no supply of EPABX systems was received under cancelled supply order No. 1-17018/103(1)/PROC/DG-NDRF/2011 dated 15.12.2011."

It was further vehemently argued that there is no case of any clandestine removal by the appellant and the mistake committed bonafide, may be accepted and no adverse inference drawn.

5. The show cause notice was adjudicated vide OIO dated 09.01.2014, whereby the contention was disbelieved and also the Certificate of NDRF was rejected observing that it cannot be concluded from the Certificate of NDRF that the appellant did not clear the goods twice against the corresponding parallel invoices. Further, the duty of Rs.1,38,194/- was demanded along with interest and penalty was also ^{Im}proposed Rs.1,38,194 & Rs.5,000/- under Rule 25 & 27 of the Central ^{Im}Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1994. Being aggrieved, the Appellant preferred an Appeal before the Id.Commissioner (Appeals), who was pleased to reject the appeal observing that the clearance of large EPBAX made against the parallel Invoices of the same number and date was not reflected in their

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record, like, sale register and monthly ER-1 returns for the respective months.

6. The contention that there has been a procedural mistake bonafide, was not accepted in view of the fact that the appellant did not intimate the facts immediately to the Revenue when they raised parallel invoices.

7. Being aggrieved, the appellant is before this Tribunal.

8. The Id.Counsel has demonstrated the original purchase order cancellation letter dated 15.12.2011, second purchase order dated 29.12.2011. In the original invoices, it was mentioned two different items, which were supplied as is evident from invoice No.654 dated 23.02.2012 and reference of purchase order dated 15.12.2011. One item supplied is Small EPABX Systems Configuration-48 8 128 01 ISDN amounting to Rs.88,599/- and the second item is Large EPABX Systems Configuration ADD-ON ITEMS-LINE CARD TO EXTEND THE NUMBER OF LINES BY 8 wherein, the rate of quantity 8 is Rs.7603/- + Excise Duty + CST for quantity 8. Further, attention is drawn in respect of corrected invoices/parallel invoices of the same number and date, wherein the correct purchase order dated 29.12.2011 is mentioned. The description of the first item is the same i.e. small EPABX systems and instead of large EPABX system relating to second item, small EPABX system is mentioned for quantity No.8 and rate is Rs.3,976.63 + Excise duty + CST 5%. It is explained that the appellant instead of following the correct procedure, which is, issue of new set of invoices under intimation to the Revenue along with credit notes, have erroneously issued parallel invoices of same number and

date making rectification in the second item (s) in the invoices. It is further urged that the contentions have not been found to be wrong nor any mal-practice was found on the part of the appellant and other corroborating records support the explanation. There is no reason for the Revenue to disbelieve their cogent explanation including certificate issued by NDRF. Accordingly, the Id.Counsel argued that the Id.Commissioner is error in confirming demand raised including penalty and the same is fit to be set aside.

9. The Id.DR relies on the impugned order and prays for dismissal of appeal.

10. Having considered the rival submissions, I find that the appellants have given a cogent explanation on the issue of parallel invoices generated by them for rectifying the original invoices, bonafide, though the same was procedurally wrong, but the same has not been found un-true and I find that the same is corroborated with the original purchase order which is cancelled and the fresh purchase order as well as certificate issued by NDRF. In this view of the matter, I find that the Id.Commissioner (Appeals) has erred in rejecting the appeal of the appellant by confirming demand of duty and penalty. Thus, the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

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प्रमाणित प्रतिलिपि / Certified True Copy

03.11.15
 रजिस्ट्रार जनरल / Asstt. Registrar
 सीमांत क्षेत्र, कानपुर / सीमांत क्षेत्र
 अपील न्यायालय / (C.E.S.T.A.T.)
 38, एम. जी. मार्ग, अलाहाबाद-211001
 38, M. G. MARG, ALLAHABAD-211001

(ANIL CHOUDHARY)
 MEMBER (JUDICIAL)

