CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70770-70771/2016-EX[DB] dated 10/06/2016

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1173/2007	METRO ORTEM LTD. (UNIT-I) B-3, SECTOR-58, NOIDA.
2	E/1174/2007	METRO ORTEM LTD. (UNIT-II) B-4, SECTOR-58, NOIDA.

		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s): SH K.K.ANAND,ADV
A-103, DEFENCE COLONY
NEW DELHI-24

5 Bar Association, CESTAT, Allahabad

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

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

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

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

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal Nos. : E/1173 & 1174/2007-EX [DB]

Arising out of O/A No. 6-7/CE/NOIDA/2007 dated 25.01.2007 passed by Commr. (Appeals) of Customs & Central Excise, Noida .

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Metro Ortem Ltd., Metro Ortem Ltd. (Unit-II)

...APPELLANT(S)

VERSUS

Commissioner of Central Excise
Noida.

...RESPONDENT(S)

APPEARANCE

Mrs. Surbhi Sinha Advocate, for the Appellant(s)
Shri V.R. Reddy (Asst. Commr.) A.R., for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 10.06.2016

ORDER NO. 70770 - 70771/2018

<u>Per Mr. Anil G. Shakkarwar :</u>

The present two appeals are arising out of common Order-in-Original and common Order-in-Appeal issue against Unit Nos. I & II of the appellant and therefore they are taken together for decision.

2. The brief facts of the case are that the appellants are engaged in the manufacture of Electric fans and parts thereof and registered for payment of Central Excise duty. The appellants were clearing Electric fans and were paying duty as provided under Section 4A of Central Excise Act, 1944. The appellants supplied Electric fans to Government Departments against DGS&D rate contract. It appeared to Revenue that in respect of Electric fans supplied against DGS&D rate contract, the sale not being to ultimate consumer such quantum of sale does not attract provisions of said Section 4A of Central Excise Act, 1944 and such quantum of goods needs to be assessed by ariving at value as provided under Section 4 of Central Excise Act, 1944 and assessable value arrived at under Section 4 was higher than the assessable value arrived at under Section 4A, after availing abatement and therefore differential Central Excise duty was payable by the appellants. The appellants were issued with Show Cause Notices making allegations that the assessment under said Section 4A was not appropriate. Unit-I of the appellant was issued with a demand of Rs.5,35,140/- under Section 11A of Central Excise Act, 1944. In addition, there were proposals in said Show Notice for demand of interest and imposition of penalty. Unit-II of the appellant was issued with a Show Cause Notice with a proposal to demand

differential Central Excise duty amounting to Rs.11,36,207.15/- under Section 11A ibid. There were also other proposals in the said Show Cause Notice. Both the Show Cause Notices were adjudicated through Order-in-Original No. 12/Joint Commissioner/05 dated 28-11-2005. The appellant contended before the Original Authority that the appellant was statutorily required to affix MRP on the individual package since such package was not exempted under Clause A of Sub-rule 2 of Rule 34 of Weights & Measures Act, 1977 and if the goods in question are excluded under Rule 34 of Standards of Weights & Measures (Packaged Commodities) Rules, 1977, then only they are out of the operation of Section 4A ibid. They have contended that the goods manufactured ~~all~~ are covered by notification under Section 4A ibid and therefore the assessment resorted to by them was appropriate and Show Cause Notice was not sustainable. The Original Authority has confirmed both the demands and imposed equal penalty under Rule 173Q of Central Excise Act, 1944. The appellants preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through Order-in-Appeal No. 6-7/CE/Noida dated 25-01-2007. The Appellate Authority did not interfere with the Original Order and rejected appeal. Against the said Order-in-Appeal dated 25-01-2007, the appellant is before this Tribunal.

3 The appellant contended in the grounds of appeal that Section 4A applies to valuation of specified goods and for valuation under said Section who is the buyer is relevant and that once the goods have been specified

under Section 4A, Section 4 is not applicable to its valuation. The goods manufactured by them are covered by notification issued under Section 4A. Therefore, in respect of said goods assessment on the basis of value arrived at Section 4A is as per law and there are large number of Ruling by Tribunal and Higher Appellate Authorities, holding the same.

4. Heard the ld. Counsel for the appellant. The ld. Counsel for the appellant has taken us through the provisions of Section 4A of Central Excise Act, 1944. Further, the ld. Counsel is taken through Notification No. 05/2001 (N.T.) dated 01-03-2001 issued under Section 4A of Central Excise Act, 1944 and argued that by understanding the wording of the sub-section 1 of Section 4A, it is very clear that the goods in respect of which a notification has been issued in the official gazette by Central Government specifying that the valuation in respect of such goods shall be as provided under Section 4A then valuation was alone be resorted to by application of provisions of said Section 4A. In the Notification No. 5 of 2001 dated 01-03-2001, the goods manufactured by them are specified at Serial No. 55. Therefore, the goods manufactured by them satisfied the requirement of sub-section 4A of Section 4 ibid and therefore, the assessable value in respect of such goods shall be arrived at by invoking sub-section (2) of Section 4A ibid. She has also relied upon the orders of this Tribunal in the case of ''Purisons Engineers Pvt. Ltd. Vs. Commissioner of Central Excise, Delhi-II reported at 2004 (164) E.L.T. 417 (Tri. – Delhi)'' and in the case of ''Surya Kiran Engineering Works Pvt. Ltd. Vs. Commissioner of Central Excise,

Noida reported at 2010 (252) E.L.T. 449 (Tri. – Delhi)'' and argued that the same are squarely applicable in the present case. Heard the ld. Departmental Representative who has supported the impugned orders.

5. We have taken rival contentions into consideration. We find that sub-section (1) of Section 4A of Central Excise Act, 1944, provides that provisions of sub-section (2) of said Section 4A shall apply only to such specified goods in respect of which Central Government has issued a notification specifying them under the provisions of sub-section (1) of said Section 4A. Sub-section (2) of Section 4A ibid provided that in respect of such goods which are specified under said sub-section (1), the value for the purpose of assessment of duty shall be deemed to be retail sale price declared on such goods less such amount of abatement allowed by notification issued in the official gazette and for such goods anything contained in Section 4 ibid shall not be applicable. So, once goods are covered by notification issued under Section 4A, then irrespective of any other consideration such as whether the supply is in wholesale or in retail, provisions of Section 4 are not applicable to such goods. In the present case, we find that the Notification No. 5/2001 dated 01-03-2001 was issued under Section 4A ibid and Electric fans were covered at Serial No. 55 of said notification. Therefore, provisions of Section 4 was not applicable for arriving at assessable value in respect of Electric fans during the period covered by Show Cause Notice related to appeals in hand. We, therefore, hold that both the Show Cause Notices relevant to the appeals in hand were

issued without authority of law and with wrong interpretation of the provisions of Section 4 and 4A of Central Excise Act, 1944. We also find that the case laws relied upon by the appellant are squarely applicable in the present case. We, therefore, set aside the Order-in-Original & Order-in-Appeal of impugned and allow both the appeals with consequential relief to the appellant ,if any.

(Pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
3/10/16 /SPS
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