

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

Dated: 19/09/2016

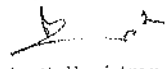
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70816-70817/2016-SMIBR dated 09/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.


 Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/709- 710/2010	SAMSUNG INDIA ELECTRONICS PVT LTD B-1 SECTOR 81, PHASE-II NOIDA, UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-NOIDA C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

**V. Lakshmi Kumaran
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014**

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

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, 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, Aditya Enclave, Hyderabad -- 38

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

14 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD

Ground, Near Karkardooma Court, Delhi-110032

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


 Asstt. Registrar

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

Appeal Nos.C/709 & 710/2010-CU[SM]

Arising out of Order-in-Appeal Nos.302-CUS/APPL/NOIDA/10 & 301-CUS/APPL/NOIDA/10 dated 30.09.2010 passed by Commissioner (Appeals) Customs, Central Excise & S. Tax, Noida.

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? : 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

M/s Samsung India Electronics Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida

...RESPONDENT (S)

APPEARANCE:

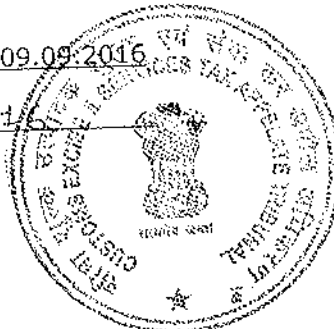
Shri Atul Gupta, Advocate for the Appellant (s)
Shri Rajiv Ranjan, Joint Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 09.09.2016

FINAL ORDER NO. - 70816-70817/2016



Per Mr. Anil Choudhary :

The appellants, M/s Samsung India Electronics Pvt. Ltd., are in appeal against Order-in-Appeal Nos.302-CUS/APPL/NOIDA/10 & 301-CUS/APPL/NOIDA/10 dated 30.09.2010 passed by Ld. Commissioner (Appeals).

2. The issue in these appeals is whether the appellants importer, who had imported certain goods from Korea and was entitled to benefit of exemption of Customs duty under Notification No.151/2009-Cus dated 31.12.2009, in respect of goods imported under Korea-India Comprehensive Economic Partnership Agreement and whether the appellant can claim the said benefit, subsequent to import and after assessment of the Bill of Entry, by filing appeal before the Ld. Commissioner(Appeals).
2. The brief facts are that the appellants imported some Injection Moulds from M/s Samsung Electronics Co. Ltd., Korea. As the certificate of origin had not been issued prior to dispatch of the goods from Korea, the same were not available and accordingly did not claim the benefit of exemption under Notification No.151/2009-Cus in the Bill of Entry and cleared the goods on payments of duty. Subsequently, when they received certificate of origin, issued retrospectively, the appellant filed appeal before Ld. Commissioner(Appeals) for modification of the assessment/Bill of Entry and allow the benefit of exemption



under the said notification. The details are give in tabular form as follows:

S.N	In Appeal No.C/709/2010/CU	In Appeal No.C/710/2010/CU
1.	Bill of Entry No.2056606 dated 07.05.2010	Bill of Entry No.2055657 dated 06.05.2010
2.	Certificate of Origin No.021-10-00023 dated 20.05.2010	Certificate of Origin No.021-10-00065 dated 01.07.2010
3.	O/A No.302/CUS/APPL/NOIDA/2010 dated 30.09.2010	O/A No.302/CUS/APPL/NOIDA/2010 dated 30.09.2010

The Commissioner(Appeals) dismissed both the appeals as non-maintainable and filed pre-maturely observing that Rule 15 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between Governments of Republic of India and the Republic of Korea) Rules, 2009 provides for detail certification procedure and further provides where certificate of Origin has not been issued at the time of exportation or within seven working days from the date of shipment due to involuntary errors or omissions or due to any other reasons, such certificate may be issued retrospectively bearing words "issued retrospectively" in the remarks box of the certificate of origin. Further observed that sub-para 2 of the Para 7 of the said Annexure-III of the aforementioned Customs Tariff Rules, 2009 provides that each importing state party may, in accordance with its Laws and regulations, provide that where goods that would have qualified as originating goods when it was imported into its territory, the importer of goods may apply for refund of any excess duty paid as a result of the goods not

having been accorded preferential tariff treatment. Accordingly, Ld. Commissioner (Appeals) held that the appellants should have followed the prescribed procedure under Rule 15 of the Customs Tariff Rules, 2009 which have not been followed.

3. The Ld. counsel for the appellants, Mr. Alok Gupta, states that it is a clear case of failure on the part of the Ld. Commissioner (Appeals) to exercise the jurisdiction vested him under the scheme of the Act. The powers of Ld. Commissioner (Appeals) in taxation matters are coterminous with that of the adjudicating authority. For this proposition, he relies on the Ruling of the Hon'ble Supreme Court in the case of MIL India Ltd. Vs. Commissioner of Central Excise, Noida 2007(210) E.L.T. 188, wherein the Hon'ble Supreme Court in para 4 of its order have held as follows:

"In our view the High Court had erred in holding that the Tribunal could not have examined the question of dutiability, once on merits, the order of the Commissioner (A) dated 22.03.2000 became final. Firstly, one must understand that excisability is a matter of principle. The Tribunal is the highest authority in hierarchy to decide on facts whether the bought out items were dutiable or not. The Tribunal was not bound by the decision of the Commissioner (A) on the question of dutiability or excisability. By order dated 22.03.2000 the Commissioner (A) had remanded the matter to the adjudicating authority on the question of quantification. Therefore, it was open to the appellant to appear before the adjudicating authority and submit contentions on quantification of duty liability. In the present matter in

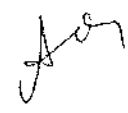
for

the second round the appellant appeared before the adjudicating authority and pointed out in the alternative that the duty demanded from the appellants at the rate of Rs.94,03,500/ was erroneous as the appellants were entitled to the benefit of Modvat credit. From this it cannot be said that the question of excisability or dutiability had become final. The conclusion of the Commissioner (A) in his order dated 223.03.2000 was not binding on the Tribunal. Further one needs to understand the concept of assessment. An order of assessment under the taxing law does not become final before the adjudicating authority in every matter. It is subject to appeal before the Commissioner (A). The Commissioner (A) can even add or subtract certain items from the order of assessment made by the adjudicating authority and that order of the Commissioner (A) could also be treated as an order of assessment. In complicated cases where costing is involved the adjudicating authority can also refer the matter to an expert. The Act also makes provision for special audit. However, when the principle of law is evolved an appeal lies to the appellate Tribunal under the said Act. In fact, the power of remand by the Commissioner (A) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of remand from the Commissioner (A). Thus, he continues to exercise the powers of the adjudicating authority in the matters of assessment. Under Section 35B any person aggrieved by the order of the Commissioner as an adjudicating authority is entitled to move the Tribunal in appeal. Section 35B indicates that the decision or order passed by the Commissioner (A) shall be treated as an order of an adjudicating authority. In the



circumstances the High Court had erred in holding that the assessee was not entitled to agitate the question of duitability in appeal before the Tribunal."

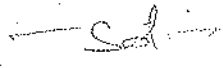
- 3.1. The Ld. counsel also relies on a Division Bench Ruling of this Tribunal in the case of CC & CE, Indore Vs. P.V.R. Infotech 2012 (278) E.L.T. 497 (Tri.-Del.), wherein under similar facts and circumstances for want of certificate of Origin, Assessee did not claim benefit under notification and produced the certificate before Ld. Commissioner (Appeals) who extended the benefit. In appeal by Revenue, this Tribunal held that Commissioner(Appeals) has no power to remand. Under admitted fact that Revenue has not objected to the authenticating of the certificate, Revenue cannot deny the benefit of exemption simply because of non-production of certificate before the lower authorities or the adjudicating authority.
- 3.2. Ld. counsel further urges that in the interest of justice, this Tribunal may allow the appeal by way of remand with a direction to the adjudicating authority to verify the certificate of origin and allow the benefit of exemption.
4. The Ld. AR for Revenue relies on the impugned order.
5. Having carefully considered the rival contentions, I hold that the Ld. Commissioner (Appeals) have erred in rejecting the appeal and it is a clear case of failure of his part to exercise jurisdiction. In the interest of justice, I allow these appeals by way of remand



to the adjudicating authority with the direction to verify the claim of the appellant and to allow the same after verifying the authenticity of the certificate of Origin. The appellant is also directed to appear before the adjudicating authority with their representation and supporting within a period of 45 days from the date of receipt of the copy of this order and seek an opportunity of hearing.

6. Thus, these appeals are allowed by way of remand as indicated above.

(Dictated & pronounced in the open Court)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy


सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.I.A.T.)
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38, M. G. MARG, ALIHAABAD-211001