FAX : 0532-2400149 REGISTERED / AD

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

Dated: 30/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70235/2016-CU[DB] dated 17/05/2016

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/699/2010	**COMMISSIONER CUSTOMS CENTRAL EXCISE AND SERVICE TAX-NOIDA** C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH 201307
		Name and Address of Respondent
2		SAMSUNG INDIA ELECTRONICS P LTD B-1, SECTOR-81 PHASE-II,, NOIDA,,U.P.

Copy To

3Advocate(s) / Consultant(s): SH ANUPAM MISHRA,ADV
OFFICE NO 7,FIRST FLOOR
ATMA RIAM MANSION ,
SCINDIA OUSE, K.G.MARG,
CONNAUGHT PLACE, NEW DELHI-01

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
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,Panjagutta 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

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

DIVISION BENCH

Appeal No. C/699/2010-CU (DB)

Dated of Hearing/decision: 17/5/2016

[Arising out of Order-in-Appeal No. 300/CUS/APPL/Noida/2010 dated 24/09/2010 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida]

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

CC & CE & ST, NOIDA Appellant

Vs.

Samsung India Electronics (P) Ltd. Respondent

Appearance:
Present for the Appellant: Shri Pawan Kumar Singh (Supdt.) AR
Present for the Respondent: Shri Anupam Mishra (Advocate)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70235/2016

Per: Anil G. Shakkarwar

Present appeal is filed by Revenue against the Order-in-Appeal

No.300/CUS/APPL/Noida/2010 dated 24/09/2010 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida.

2. The brief facts of the case are that the Respondent filed a refund claim of Rs.2,84,26,142/- under Notification No. 102/2007-Cus dated 14/09/2007. The Original Authority through its order dated 23/12/2010 allowed refund of Rs.2,73,33,637/- (Rupees Two Crores Seventy Three Lac Thirty Three Thousand Six Hundred & Thirty Seven only) and rejected the claim for refund to the extent of Rs. 10,92,505/- in respect of three Bills of Entry details of which are given in impugned Order-in-Appeal. The Commissioner (Appeals) in his impugned order dated 24.09.2010 remanded the matter back to Original Adjudicating Authority for de-novo adjudication with certain direction relying by ruling by Hon'ble Supreme Court issued in the case of Union of India Vs. Umesh Dhaimode 1998 (98) ELT 584 (S.C.).

3. The Revenue has contended that placing of reliance on said ruling by ld. Commissioner (Appeals) was wrong since the said case was for a period prior to amendment in Section 128A of the Customs Act, 1962 since the said amendment has taken away power to remand from Commissioner (Appeals). The Revenue has relied on Hon'ble Supreme Court ruling in the case of MIL India Ltd. Vs. Commissioner of Central Excise, NOIDA reported in 2007 (210) E.L.T. 188 (S.C.) and contended that Commissioner (Appeals) does not have power to remand the matter. Further, Revenue prayed for setting-aside the impugned order.

4. Heard both the appellants and respondents.

5. Ld. Departmental Representative reiterated submissions made in the appeal. The ld. Advocate for the Respondent has produced a copy of Precedent Order of Division Bench of this Tribunal in the case of Commissioner of Central Excise, Meerut -II Vs. Honda Seil Power Products Ltd. reported at 2013 (287) E.L.T. 353 (Tri.-Del.) and contended that the Hon'ble Principal Bench of Tribunal has in the said Precedent Order distinguished the Hon'ble Supreme Court ruling in the case of MIL India Ltd. and relied on Hon'ble Supreme Court ruling in the case of Umesh Dhaimode and held that Commissioner (Appeals) has power to remand the matter back to the Original Adjudicating Authority. We have carefully gone through rival submission. The issue to be decided by us is whether the Commissioner (Appeals) has power to remand the matter back to the Original Adjudicating Authority. We are inclined to follow the Precedent Order of the Division Bench of this Tribunal in the said case of Commissioner of Central Excise, Meerut Vs. Honda Seil Power Products Ltd.. We hold that Commissioner (Appeals) has power to remand the matter back to the Original Authority with direction for de-novo adjudication. We dismiss the appeal filed by Revenue. We direct the Original Adjudicating Authority to follow the direction given in impugned order and dispose of the mater, within 60 days of receipt of this order.

(Dictated and pronounced in the open Court)

Sd/-

(Anil G. Shakkarwar)
Member (Technical)

Sd/-

(Anil Choudhary)
Member (Judicial)

प्रमाणित प्रति / Certified True Copy
9.6.16
सहायक पंजीयक / Asstt. Registrar