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: 28/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70213/2017-SM[BR] dated 22/02/2017

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
	C/53958/2014	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
		Samsung India Electronics Pvt Ltd B-1, Sector-81, Phase-ii,,, NOIDA ,UP

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. C/53958/2014-CU[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/32/2014 dated 17/02/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

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

Commissioner of Customs, Central Excise & Service Tax, Noida — **Appellant**

Vs.

M/s Samsung India Electronics Pvt. Ltd. — **Respondent**

Appearance:

Shri D.K. Deb, Assistant Commissioner, (AR). — for Appellant
None — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 29/11/2017

FINAL ORDER NO...70213/2017...

Per: Anil Choudhary

The present appeal is filed by Revenue against Order-in-Appeal No. NOI/EXCUS/000/APPL/32/2014 dated 17/02/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida. It has been held that the respondent-assessee is entitled to amendment of the bill of entry under the provisions of Section 149 of the Customs Act, 1962 read with Notification No. 187/2009-Cus (NT) dated 31/12/2009.

2. The brief facts of the case are that the respondent-assessee imported some consignment from Korea and filed Bills of Entry during the period from 28/06/2012 03/01/2011, about 58 numbers of Bills of Entry appears to be allowable. The appellant was entitled to concessional (at nil) rate of duty on import under the provisions of Notification No. 151/2009-Cus dated 31/12/2009, which provides for nil rate of duty where the goods have originated from Republic of Korea, when imported into India. It is a case of the appellant that, at the time of shipment of the goods, the certificate of origin was not provided by the exporter from Korea, which was subsequently provided. Accordingly, the appellant could not claim the benefit of Notification No. 151/2009-Cus, at the

time of clearance of the goods. Subsequently on receipt of the certificate of origin the respondent-assessee filed the claim for amendment of the Bill of Entry and to allow the benefit of exemption under the said notification. The Revenue vide Order-in-Original No. 26/ADC/Cus/2013 dated 29/07/2013, the Additional Commissioner allowed the prayer for amendment in the subject Bills of Entry under the provision of Section 149 of the Customs Act, 1962. Being aggrieved the Revenue preferred appeal before the ld. Commissioner (Appeals) on the ground that Section 149 of the Customs Act, 1962, provides that amendment in the Bill of Entry or Shipping Bill can be made subsequently in case the document was in existence when Bill of Entry was filed, based on which amendment is sought at the time of processing of such Bill of Entry or Shipping Bill. The ld. Commissioner (Appeals) was pleased to dismiss the appeal of Revenue upholding and allowing of amendment in the Bill of Entry or Shipping Bill. Thereby, upholding the entitlement of concessional/nil rate of duty under the said Notification No. 151/2009-Cus dated 31/12/2009. Being aggrieved the Revenue is in appeal before this Tribunal.

3. The ld. AR for Revenue relies on the grounds of appeal and that the issue involved is whether amendment in the Bill of Entry, was permissible under Section 149 of the Customs Act, 1962 on the basis of documents/certificate of origin

issued with retrospective effect, vide Notification No. 187/2009-Cus (NT) dated 31/12/2009.

4. Heard both the parties.

5. I find that the issue involved herein is no longer res-integra, under the similar facts and circumstances in the case of Samsung India Electronics Pvt. Ltd., in Appeal No. C/709 & 710/2010-CU[SM] vide Final Order No. 70816-70817/2016 dated 09/09/2016, taking notice of the relevant provisions and also the provisions of Korea-India Comprehensive Economic Partnership Agreement, it was held as follows:-

> Having carefully considered the rival contentions, I hold that the Ld. Commissioner (Appeals) have erred in rejecting the appeal and it is 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. Accordingly, I find that there is no error and/or impropriety in the impugned order. The ld. Commissioner

(Appeals) have rightly upheld the amendment in the Bills of Entry, in question.

7. Thus, the appeal of Revenue is dismissed. The respondent-assessee will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

प्रमाणित प्रति / Certified True Copy
03/03/17
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari