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: 19/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70374/2017-CU[DB] dated 11/04/2017

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
1	C/55355/2014	**Samsung India Electronics Pvt Ltd** B-1, Sector-81, Phase-ii, NOIDA UP-201305
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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

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

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

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

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

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

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/55355/2014-CU[DB]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/93/2014 dated 30/04/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

M/s Samsung India Electronics Pvt. Ltd. **Appellant**
Vs.

Commissioner of Customs, Central Excise & Servic Tax, Noida **Respondent**

Appearance:

Shri Atul Gupta, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 11/04/2017

FINAL ORDER NO. 70374/2017

Per: Anil G. Shakkarwar

The present appeal is preferred against the Order-in-Appeal No. NOI/EXCUS/000/APPL/93/2014 dated 30/04/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida.

2. The brief facts of the case are that, the appellants got themselves registered with the jurisdictional Central Excise Officers under Customs (Import of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 1966 with effect from 17/07/2009 and executed bond which was accepted by jurisdictional Assistant Commissioner on

03/02/2011 for import of LCD Panel for use in their factory for manufacture of L.C.D. TVs, the intended purpose, at concessional rate of duty under Notification No. 21/2002-Cus. dated 01/03/2002 as amended. They also undertook to follow the conditions imposed by said Rules. While submitting the details of consumption of goods imported i.e. LCD Panels at concessional rate of duty procured against Annexure-III for the period April, 2011 to February, 2012 appellant through their letter dated 23/05/2012 submitted that 3702 Nos. of LCD Panels were exported by them. It appeared to Revenue that appellant failed to comply with the conditions laid down under the Customs (Import of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 1966 and also violated the provisions of Notification No. 21/2002-Cus. dated 01/03/2002 and thereby evaded payment of Basic Customs Duty of Rs.17,23,112/-. It appeared to the Revenue that Rs.17,23,112/- was recoverable from appellant under Rule 8of the said Rules. Therefore, a Show Cause Notice dated 10/08/2012 was issued to the appellant. The said Show Cause Notice was adjudicated through Order-in-Original No. 21/Additional Commissioner/Noida/2013-14 dated 23/07/2013. The Original Authority confirmed the demand and also ordered the appellant to pay interest and imposed equal penalty. The said Order-in-Original was upheld by the Commissioner (Appeals) vide Order-in-Appeal No.

NOI/EXCUS/000/APPL/93/2014 dated 30/04/2014. Aggrieved by the said order the appellant is before this Tribunal.

3. Learned Counsel for the appellant has submitted that with effect from 17/03/2012, Rule 7A was introduced in the said Rule wherein it was provided that the manufacturer obtaining the benefit under the said Rules may re-export the unutilized imported goods and further submitted that during the relevant period of Show Cause Notice the requirement under Rule 8 was for accounting for the goods and to establish that the goods on which concessional rate duty was paid are used for the purpose for which the import was intended. He has further submitted that the goods which were re-exported without any use should be treated as if same were never imported and should be treated as accounted for and the provision of Rule 8 for recovery are not invocable in respect of such re-exported goods.

4. Learned D. R. has relied on the impugned Order-in-Appeal.

5. Having considered the rival contentions, we find that for the period subsequent to the period of Show Cause Notice the said Rules were amended wherein it was provided that the imported goods which could not be utilized can be re-exported. Though the said provision was not applicable to the period for which the Show Cause Notice was issued, the principle involved in the said provision should be applicable

for all the material periods. We find that it may be reasonable that if the goods on importation are re-exported as such then they should be treated as if they were never imported. In that event, Rule 8 of the said Rules will not be applicable. In view of such fact that the goods under question were re-exported, we set aside the impugned Order-in-Appeal and allow the appeal.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
03/05/2017
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