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: 19/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. C/A/70062/2017-CU[DB] dated 09/01/2017

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

	Appeal	Name and Address of Appellant
1	C/56532/2013	**Samsung India Electronics Private Limited** B-1,sector-81,phase-ii NOIDA U.P
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA
EXTENTSION LINK ROAD
NEW DELHI-110014
Link Road,
New Delhi,
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 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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

COURT-I

Appeal No. C/56532/2013-CU[DB]

Arising out of Order-in-Original No. 50/COMMISSIONER/NOIDA/2012-13 dated 24.12.2012 passed by Commissioner, Customs & Central Excise, Noida.

Samsung India Electronics Private Limited ...APPELLANT

VERSUS

Commissioner of Customs & Central Excise, Noida ...RESPONDENT

APPEARANCE

Shri Atul Gupta, Advocate for the appellant.
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

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

DATE OF HEARING : 20. 12. 2016

FINAL ORDER NO. 70062/2017

Per Anil G. Shakkarwar :

The present appeal is preferred against the Order-in-Original No. 50/COMMISSIONER/NOIDA/2012-13 dated 24.12.2012

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, 1996 w.e.f. 17.07.2009 and executed bond which was accepted by jurisdictional Assistant Commissioner on 19.03.2010 and another bond on 22.07.2010 for import of goods for use in their factory for manufacture of L.C.D. TVs, the intended purpose, at concessional rate of duty under Notification No. 77/2009-Cus. dated 07.07.2009. They also under took 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, 2010 to July, 2010, appellant through their letter dated 07.10.2010 submitted that 3460 Nos. of LCD Panels were exported by them ~~during~~ from July, 2010. On inquiry, Revenue came to know that during the period from July, 2010 to October, 2010, the appellant exported 8,254 Nos. of LCD Panels on which the exemption under the said Notification was allowed at the time of importation wherein duty forgone under the claim of said Notification was Rs. 78,53,643/-. It appeared to Revenue that under Rule 8 of said Rule 8,254 Nos. of LCD Panels were not accounted for by the appellant and therefore Rs. 78,53,643/- was recoverable from appellant under Rule 8 of the said Rules. Therefore, a show cause notice dated 30.09.2011 was issued to the appellant. The said show cause notice was adjudicated through Order-in-Original No. 50/COMMISSIONER/NOIDA/2012-13 dated 24.12.2012. The Original Authority confirmed the demand and also ordered the appellant to pay interest and imposed equal penalty. Aggrieved by the said order the appellant is before this Tribunal.

3. Learned counsel for the appellant has submitted that w.e.f. 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-exported 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 which their import was intended. He has further submitted that the goods which were re-exported without any use should be treated as if the same were never imported and should be treated as accounted for and the provisions 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-Original.

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 ~~same~~ 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 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-Original and allow the appeal.

(Order pronounced and dictated in open Court)

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

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

Patel/-

प्रमाणित प्रति / Certified True Copy

20.1.17

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