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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70114/2017-SM[BR] dated 20/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | E/9/2011 | Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005. |
| | | Name and Address of Respondent |
| 2 | | INDIAN HARBS RESEARCH & SUPPLY CO. LTD., SHARDA NAGAR SAHARANPUR.,, |

Copy To

3Advocate(s) / Consultant(s):

**Aalok Arora,Adv**
**82 - Mission Compound,**
**Saharanpur,**
**Uttar Pradesh**

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. E/9/2011-EX[SM]

(Arising out of Order-in-Appeal No. 189/-CE/MRT-I/2010-11 dated 30/08/2010 passed by Commissioner of Central Excise, (Appeals), Meerut-I)

**Commissioner of Central Excise, Meerut-I** **Appellant**

Vs.

**M/s Indian Harbs Research & Supply Co. Ltd.** **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
Shri Aalok Arora, Advocate, for Respondent

**CORAM:**

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

Date of Hearing & Date of Decision : 20/01/2017

FINAL ORDER NO..70114/2017.........

**Per: Anil G. Shakkarwar**

The present appeal is filed by Revenue. The appeal is directed against Order-in-Appeal No. 189/-CE/MRT-I/2010-11 dated 30/08/2010 passed by Commissioner of Central Excise, (Appeals), Meerut-I.

2. The brief facts of the case are that the respondents were engaged in the manufacture of Patent & Proprietary Ayurvedic Medicaments. The Jurisdictional Assistant Commissioner through letter dated 27/04/2007 passed order for provisional assessment of the goods manufactured. The assessment for

the period from 01/04/2007 to 31/03/2008 was financed through Order-in-Original No. 06/2008 (Val. III/03) dated 23/10/2008. The respondent filed the claim of refund of Rs.4,05,836/- on 09/10/2009 on the basis of result of finalization of said provisional assessment through said order dated 23/10/2008. The claim of refund was decided through Order-in-Original No. 01/2010 (R) dated 07/01/2010 wherein the Original Authority passed the claim of refund and sanctioned Rs.4,05,836/- stating that the said claim was the result of finalization of provisional assessment as ordered through said order dated 23/10/2008. Aggrieved by the said Order-in-Original No. 01/2010 (R) dated 07/01/2010, Revenue preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) through impugned order has held that the said order dated 23/10/2008 was not challenged by Revenue, therefore, the refund claim of provisional assessment resulting on implementation of said order dated 23/10/2008 cannot be challenged by Revenue. The ld. Commissioner (Appeals) upheld the order dated 07/01/2010. Aggrieved by the said Order-in-Appeal the appellant preferred appeal before this Tribunal.

3. The grounds of appeal are discussing how the discounts allowed in order dated 23/10/2008 are not appropriate.

4. Heard the ld. D. R. who has supported the grounds of appeal.

5. Heard the ld. Counsel for the appellant who has stated that the said order dated 23/10/2008 was not challenged by Revenue. Therefore, the refund claim arising out of implementation of said order cannot be challenged.

6. Having considered the rival contentions and on perusal of record, I find that the ld. Commissioner (Appeals) has stated that the said order dated 23/10/2008 was not challenged by Revenue and therefore the claim of refund arising out of implementation of the same was proper & due. I do not find any grounds of appeal stating contradictory to such finding of Commissioner (Appeals). Therefore, I could not find any merit in the grounds of appeal raised by Revenue. Therefore, I dismiss the appeal filed by Revenue.

7. In result, appeal of the Revenue is dismissed. The respondent shall be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

*Ansari*

प्रमाणित प्रति / Certified True Copy
8.2.17
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