CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70017-70022/2016 SM dated 07/1/2016

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
	E/60418/2013& E/52083-52087/2015	NOVATEUR ELECTRICAL& DIGITAL SYSTEMS PVT LTD B-200, PHASE-II NOIDA(UP)
	Name and Address of Respondent	CCE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH G.P.BANERJI,ADV
H-5C, GULMOHAR APTT
VIKASPURI, NEW DELHI.

4 Bar Association, CESTAT, Delhi
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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi -- 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal Nos.60418/13 & 52083-52087/15

Arising out of OIA No.NOI/ExCus/000/129-134/2013-14 dated 28/06/2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Noida.

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Novateur Electrical & Digital Systems Pvt. Ltd.

..APPELLANT(S)

VERSUS

Commissioner of C.Ex., Noida

RESPONDENT (S)

APPEARANCE

Shri G. P. Banerjee, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.01.2016

Final ORDER NO. 70017-70022/2016

Per Mr. Anil Choudhary :

The appellant, M/s Novateur Electrical & Digital Systems Pvt. Ltd., is in appeal against the Order-in-Appeal Nos. NOI/ExCus/000/129-134/2013-14 dated 28/06/2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Noida, wherein the rebate claims of the appellants were sanctioned and the rebate amount appropriated by the Assistant Commissioner against the purported demand of Rs.23,79,098/- under Section 8 (3A) of Central Excise Rules, 2002.

2. Brief facts of the case are that the appellant is a manufacturer of MCB/MCCB (electrical items). During the period from March, 2012 to September, 2012, there was some short payment of duty on the goods cleared due to mal-functioning in the computer software fully described as wrong link mapping in the invoicing system. The amount of short payment was discovered suo moto and calculated at Rs.42,80,590/-, which was paid by debit to Cenvat account on 31.10.2012 and also the interest for the period, was deposited through PLA of Rs.2,36,641/-. Thereafter, on the verbal direction of the Range Superintendent that the appellant is required to pay the short paid duty in cash, the appellant again paid the said amount of Rs.42,80,590/- by cash/PLA on 04.01.2013 and also paid interest under protest of Rs.1,68,076/- for the period from 01.11.2012 to 04.01.2013. Thereafter, the Range Superintendent vide his letter dated 14.02.2013 directed the appellant to furnish consignment/invoicewise details of clearance for the period

01.05.2012 to 04.01.2013. The said details were furnished. Thereafter, vide a letter dated 25.02.2013, the Range Superintendent directed the appellant to deposit an amount of Rs.23,79,098/- payable under the provisions of Rule 8(3A) of CCR, 2002 read with Section 11AA of the Act. The appellant immediately vide their letter dated 05.03.2013 replied stating that there is no case of default of payment and it is a case of short payment, which have been suo moto paid with interest and as such, the provision of Rule 8 (3A) is not attracted in their case. No further correspondence was made by the Revenue in this regard. The appellant is also the exporter of the product and had applied for rebate vide six different applications, on which rebate was sanctioned by different Orders-in-Original and the same was appropriated with the amount of Rs.23,79,098/- as demanded in the letter dated 25.02.2013 of the Range Superintendent. The details are as follows :

Sl.No.	Appeal Nos. of Commr. (Appeals)	O-I-O No. and Date	Amount of Rebate Sanctioned & appropriated
1.	79/CE/APPL/Noida/2013 dated 26.04.2013	485-R/N-IV/12-13 dated 28.02.2013	Rs.2,82,376.00
2.	80/CE/APPL/Noida/2013 dated 26.04.2013	486-R/N-IV/12-13 dated 28.02.2013	Rs.6,61,472.00
3.	81/CE/APPL/Noida/2013 dated 26.04.2013	487-R/N-IV/12-13 dated 28.02.2013	Rs.3,87,247.00
4.	82/CE/APPL/Noida/2013 dated 26.04.2013	488-R/N-IV/12-13 dated 28.02.2013	Rs.2,95,915.00
5.	83/CE/APPL/Noida/2013 dated 26.04.2013	489-R/N-IV/12-13 dated 28.02.2013	Rs.4,77,066.00
6.	84/CE/APPL/Noida/2013 dated 26.04.2013	490-R/N-IV/12-13 dated 28.02.2013	Rs.2,75,022.00

It is further evident from the records that no opportunity was granted to the appellant before making aforementioned adjustment.

3. Being aggrieved with the Orders-in-Original appropriating their rebate amount, the appellant preferred appeals before the ld.Commissioner (Appeals), who vide the impugned order, have pleased to dismiss the appeal.

4. Being aggrieved, the appellant is before this Tribunal. The ld.Counsel for the appellants argues that Rule 8 (3A) is not attracted in their case as the very language of Rule 8 (3A) refers to a situation when an assessee defaulted in payment of duty declared as payable by him in the returns, which is not the case admittedly. Secondly, he argues that no demand under Rule 8 (3A) can be raised without the service of show-cause notice and order of adjudication. He further argues that the adjustment of the rebate without any notice as required under the provisions of the Act and the Rules or any opportunity of hearing, is bad. He further states that as required under Section11A (b) read with sub-section 3 of Section 11A, it is explicit, in case of short payment of duty where, an assessee suo moto paid the same with interest and informed the Central Excise Officer. No show-cause notice is required to be issued. In their case, there has been no show-cause notice. Demand raised by the letter of the Range Superintendent dated 25.02.2013, is ab initio void and not recoverable. Accordigly, he prays for allowing the appeal with consequential relief.

5. The ld.A.R. for the Revenue relies on the ruling of this Tribunal in the case of Meenakshi Associates Vs. Commr. of Central Excise, Noida

: 2012-TIOL-587-CESTAT-DEL, in the facts of delay in payment of duty and the same having been paid subsequently with interest. In such circumstances, the provision of Section 8 (3A) is attracted thereby requiring the assessee to pay duty in cash or through PLA during the period under default.

6. After considering the rival contentions, I hold that no demand under Rule 8 (3A) can be raised without service of valid show-cause notice, giving an opportunity of hearing for adjudication, the provision being penal in nature. Secondly, I hold that under the circumstances in this case being short payment of duty, the provisions of Rule 8(3A) are not attracted and the ld.Commissioner (Appeals) has erred in upholding the appropriation of the purported demand under Rule 8 (3A). Thirdly, I hold that no appropriation under Section 11 of the Act, can be done without giving an opportunity of hearing to the appellant. The appropriation is bad on this score also.

7. Thus, all the appeals are allowed with consequential relief and the impugned orders are set aside. The appellant will be entitled to refund of rebate with interest starting from three months from the date of sanction till the date of disbursement.

(Dictated and pronounced in the open Court)

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
21.1.16
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