

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

Dated: 12/04/2017

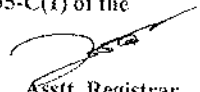
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70349/2017-SM|BR| dated 03/03/2017

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/1067/2011	SAMSUNG INDIA ELECTRONICS PVT. LTD., B-1, SECTOR-81, PHASE-II, NOIDA (U.P.)

	Name and Address of Respondent
2	-C.C.E. NOIDA C-56/42, Sector-62, Noida- 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. 2

APPEAL No. E/1067/2011-EX[SM]

(Arising out of Order-in-Appeal No. 36-CE/APPL/NOIDA/2011 dated
24/02/2011 passed by Commissioner of Central Excise & Customs
(Appeals), Noida)

M/s Samsung India Electronics Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Noida

Respondent

Appearance:

Shri Atul Gupta, Advocate,

for Appellant

Shri Pawan Kumar Singh, Superintendent (AR),

for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 03/03/2017

FINAL ORDER NO...70349/2017.....



Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s
Samsung India Electronics Pvt. Ltd. against Order-in-Appeal
No. 36-CE/APPL/NOIDA/2011 dated 24/02/2011 passed by
Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the appellant
deposited an amount of Rs.20,33,747/- through TR-6 Challan
dated 20/01/2009 on insistence by the Department towards
Education Cess. Further on 17/04/2009 they filed refund
application/claim for the said amount of Rs.20,33,747/-. The
Original Authority decided the said application through
Order-in-Original No. 527-R/AC/N-IV/2010-11 dated
26/11/2010 wherein he rejected the refund claim stating that
Commissioner of Central Excise, Noida has issued a Show
Cause Notice to the appellant under the C. No.

V(15)Adj/Noida/Samsung/158/2009 dated 02/02/2010 wherein an amount of Rs.59,08,917/- has been demanded on the ground that the appellant has short paid the said amount during the period from March, 2008 to August, 2009 which includes the amount of Rs. 20,33,747/- deposited by the appellant and the said Show Cause Notice also has a proposal for appropriation of the said amount and since the said Show Cause Notice is still pending adjudication, he has rejected the application for refund. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). It was decided through impugned Order-in-Appeal No. 36-CE/APPL/NOIDA/2011 dated 24/02/2011 wherein the ld. Commissioner (Appeals) has declined to interfere. Aggrieved by the said Order-in-Appeal dated 24/02/2011 appellant has preferred appeal before this Tribunal.

3. During the hearing on 02/01/2017 Revenue was requested to submit a report about the outcome for the adjudication of said Show Cause Notice dated 02/02/2010.

4. Heard the ld. Counsel for the appellant who has submitted that the amount that was deposited on 20/01/2009 was not in compliance to any confirmed demand and that the said amount had become duty deposit and that the Original Authority has held that said amount was proposed to be appropriated on adjudication of Show Cause Notice dated 02/02/2010, and that the said Show Cause

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Notice dated 02/02/2010 is not yet adjudicated therefore, the said amount is without any authority of law with the exchequer.

5. Heard the ld. D. R. who has submitted a report dated 11/01/2017 received from Commissionerate, Noida wherein it has informed that said Show Cause Notice dated 02/02/2010 is still pending adjudication.

6. Having considered the rival contentions and on perusal of record, I find that the amount which was deposited on 20/01/2009 was not deposited in compliance to any confirmed demand. The same was deposited on insistence of the Department, and that even today that amount has not been confirmed through any process of adjudication. Therefore, the appellant is entitled for refund of the same along with interest as per the provisions of law. I, therefore, allow the appeal and direct the Original Authority to grant refund of the said amount with interest within 90 days of receipt a copy of this order. In above terms, the appeal is allowed, and the appellant is entitled to consequential relief, as per law.

(Dictated and pronounced in Court)

-Sd/-

(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy

25/04/2017
सहायक पंजीकार / Asstt. Registrar
संविदाशुल्क, करपायशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S./I.A.T.)
38, एम. जी. मार्ग, एलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001