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: 11/07/2017

To

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

Final Order No. A/70611/2017-EX[DB] dated 29/06/2017

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/1244/2011	**I.T.I. LIMITED,** DOORHASH NAGAR, RAEBARELI. (U.P.)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

S. P. Ojha
299, Baghambari Housing
Scheme, Allahpur,
Allahabad,
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/1244/2011-EX[DB]

(Arising out of Order-in-Appeal No. 37-CE/LKO/2011 dated 28/02/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s I.T.I. Limited **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri S. P. Ojha, Advocate. for Appellant
Shri Pawan Kumar Singh, Superintendent (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 : 29/06/2017

FINAL ORDER NO. 70611/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 37-CE/LKO/2011 dated 28/02/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellant were engaged in the manufacture of telecom equipments falling under Tariff Item No. 8517 & 8525 of the first Schedule to the Central Excise Tariff Act, 1985. On 05/10/1994 appellant made an application for provisional assessment of the goods manufactured by them under Rule 9B of the Central Excise

Rules, 1944 on the ground of non-finalization of rate contract for prices for supply to the Department of Telecommunication (DOT). The assessments for the Financial Years 1994-95 & 1995-96 were finalized through Order-in-Original No. 01/Provisional Assessment/ITI/2009 dated 26/11/2009. Through the said order dated 26/11/2009 the Adjudicating Authority has come to a conclusion that the appellant had paid excess duty of Rs.1,05,82,207/- and advice the appellant to file refund claim for the same. The appellant filed refund claim for the said amount on 18/12/2009. The Assistant Commissioner of the Jurisdictional Division, Raebareli through Order-in-Original No. 102/Refund/RBL/2010 dated 02/07/2010 rejected the said refund on the ground of unjust enrichment and issue of limitation. The appellant preferred appeal before Commissioner (Appeals). Ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 28/02/2011 wherein the ld. Commissioner (Appeals) has held that the appellant did not produce any documentary evidence that incidence of duty has not been passed on by the appellant to their customers and therefore upheld the said Order-in-Original dated 02/07/2010. Aggrieved by the said order appellant filed appeal before this Tribunal.

3. The grounds of appeal are:-

(A) The Original Authority in his order dated 26/11/2009 has stated that the team C has scrutinized the records relating to Central Excise statement showing provisional value of goods, provisional duty paid, revised Assessable value, excise duty paid excess duty paid short duty paid invoices, RT-12, final rates, supplementary duty payment details, excise gate passes, invoices, etc. and then came to a conclusion the Excise duty to the tune of Rs.1,05,82,207/- was paid by appellant for the Financial Years 1994-95 & 1995-96. Therefore, it is not true that the documentary evidence was not produced before the Original Authority.

(B) As provided under Rule 9B of the Central Excise Rules, 1944 the Assistant Commissioner finalizing provisional assessment should have passed refund without appellant-assessee making a separate application for refund.

(C) They had submitted the refund claim for the Financial Years 1994-95 & 1995-96 according to the final assessment and the excess amount that was paid by the appellant was rightfully eligible for refund.

4. Heard the ld. Counsel for the appellant, who has submitted a certificate dated 04/04/2017 issued by Chartered Accountant in relation to refund claim for the Financial Year 1994-95 wherein it has been stated as follows "M/s I.T.I. Limited is manufacturer/supplier of Telecom Equipments and BSNL is the purchaser of these equipments to provide services to the public at large. The Sale & Purchase

transactions between these two companies are not limited to any particular Purchase Order. Both these companies have made each other Debtor & Creditor in their books of account. Therefore, even in any case any excess payment at any instance made to ITI Ltd. by BSNL the same is recovered either from balance payments from that particular Purchase Order value or from other issued Purchase Order value."

5. Heard the ld. D. R. for Revenue, who has supported the impugned Order-in-Appeal dated 28/02/2011.

6. Having considered the submissions from both sides and on perusal of said certificate dated 04/04/2017 issued by Chartered Accountant, we find that the Original Authority and Appellate Authority below did not have advantage of said certificate for appreciation of transactions between the appellant and their customers. The certification of the transactions between the appellant and their customers is essential for understanding as to whether in the practice of accounting as stated in the said certificate dated 04/04/2017 is there any chance of higher duty incidence getting passed on to the customer and appellant be in a position to pay less excise duty to the exchequer and get enriched by the difference between the two through refund. We, therefore, remand this matter back to the Original Authority after setting aside both impugned Order-in-Original & Order-in-Appeal with a direction to re-examine the issue of unjust enrichment and decide the matter afresh on merit. We

direct the appellant to submit a copy of the said certificate issued by Chartered Accountant dated 04/04/2017 to the Original Authority along with other relevant record relating to the accounts so as to enable the Original Authority to examine the issue ~~after~~ afresh in the light of nature of transaction between the appellant and their customers as reflected in said certificate dated 04/04/2017. With these directions, appeal is allowed by way of remand.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Cerified True Copy
17/07/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
जे. एम. जी. मार्ग, इलाहाबाद-211001
J. M. G. MARG, ALLAHABAD-211001