FAX : 0532-2400189

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

Dated: 04/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71031/2016-EX[DB] dated 23/09/2016

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
1	E/122/2009	BHARAT HEAVY ELECTRICALS LTD. MANAGER (FINANCE/EXCISE) P.O.BHEL KHAILAR, JHANSI-284129 (U.P.)
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3 Advocate(s) / Consultant(s):

Z. U. Alvi
D-8,BDA COLONY,
ADJACENT GARUDA TRAVELS., KOH-E-FIZA, BHOPAL,
MADHYA PRADESH-462001

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

03-11-16

ISSUED ON

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

Appeal No.E/122/2009-[SM]

Arising out of Order-in-Appeal No.365/CE/APPL/KNP/2008 dated 20.10.2008 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

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 Bharat Heavy Electricals Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT (S)

APPEARANCE

Shri Z.U. Alvi, Advocate for the Appellant (s)
Shri B. Kumar Iyer Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 23.09.2016

FINAL ORDER NO.- 71081/2016

Per Mr. Anil Choudhary :

The appellant, M/s Bharat Heavy Electricals Ltd., is in appeal against Order-in-Appeal No.365/CE/APPL/KNP/2008 dated 20.10.2008 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

2. The appellant is in appeal against rejection of their refund claim, pursuant to provisional assessment vide Order-in-Appeal dated 20.10.2008, passed by Ld. Commissioner (Appeals) Central Excise, Kanpur.

3. The brief facts of the case are that the appellant for the financial year 1999-2000 was under provisional assessment. At the end of the financial year, the appellant suo-moto calculated the value due to reduction in the prices of inputs and worked out that they have deposited excess duty of Rs.37,63,401/- and accordingly, took credit in their PLA/RG-23 A part-II Register. This was objected to by Revenue vide show-cause-notice dated 02.05.2001 and thereafter, vide O-I-O dated 26.11.2001, the said amount was demanded pending finalization of provisional assessment. The appellant had preferred an appeal against the said demand by Revenue. Thereafter, under due process vide finalization of assessment order, being order dated 14.10.2005, the Provisional assessment was finalised observing that since during the period, there has been no increase in value, therefore, question of differential duty doesn't arise. Further, the Assistant Commissioner in the said order under exercise of

powers under Rule 7(e) of CER 2002 directed the Range Officer to finally assessed the monthly RT-12 returns for the period 1999-2000.

4. The appellant, to expedite the matters filed their refund claim of Rs.37,63,404/-, the amount of duty paid in excess according to them filed on 11.07.2006. In the meantime, it is ~~in~~ fact on record that Revenue had collected the said amount of Rs.37,63,404/- from refund amount of Rs.5,62,49,541/- granted to the appellant vide Order number 1077/05-EX dated 28.12.2005. The adjustment being made vide O-I-O No.29-Ref/AC/2006 dated 10.10.2006. This said refund-claim was adjudicated vide O-I-O No.76/Refund/AC/JHS/2008 dated 30.042008, rejecting the refund claim, the Assistant Commissioner observed that since the earlier appeal in the suo moto credit and disallowance matter is pending before Ld. Commissioner Appeals, Central Excise, Kanpur. The matter is subjudice and accordingly, the appellant cannot take benefit of clause (eb) of the Explanation (B) of section 11B of Central Excise Act, 1944, which defines the relevant date in case of Provisional Assessment and hence refund is not admissible. Further, refund was also held time barred under the provisions of Section 11 B of the Act. Being aggrieved, the appellant preferred appeal before Ld. Commissioner (Appeals), who vide the impugned order, have rejected the appeal upholding the rejection of refund.

5. Heard the parties.

6. On considering, the rival submissions and facts on record, I find that the proceedings of Provisional Assessment under Rule 7 of the Central Excise Rules, 2002 had not been completed in terms of the direction as contained in the finalisation Order when direction is given to the Range Officers to finally assessed the monthly returns and determine the tax liability of the appellant. I, further observe that the Assistant Commissioner (Appeals) have misdirected themselves into irrelevant considerations under the facts and circumstances. Accordingly, I hold that the appellant is entitled to refund, subject to final calculation by the Revenue under Rule 9(B) in terms of the finalisation Order dated 14.10.2005 passed by the Assistant Commissioner. Accordingly, I direct the Range Officers/Superintendent to make the final calculation of the duty and to refund the amount of excess duty, if any, with interest as per Rules from the date of finalisation of the valuation by the Assistant Commissioner i.e. 14.10.2005. Thus, the appeal is allowed with directions as indicated hereinabove. The Range Officer ~~has~~ is further directed to complete the calculations within a period of 60 days from the date of receipt of a copy of this order and determine the amount payable/refundable, if any.

(Dictated 8 [illegible] Open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

सत्यापित प्रति / Certified True Copy

Asstt. Registrar

(C.E.S.T.A.T.)