FAX : 0532-2400149

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

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70869/2016-SM[BR] dated 28/03/2016

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/2855/2011	UNIWORD TELECOM LIMITED, D-149, SECTOR-63, NOIDA (U.P.)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, SECTOR-62, NOIDA-201307

Copy To

3Advocate(s) / Consultant(s): SH ABHISHEK JAJU,ADV
F-78,FF LAJPAT NAGAR-II
NEW DLHI-24

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 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. ~~16 Office Copy~~ ~~17 Guard File~~

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/2855/2011 (SM)

[Arising out of Order-in-Appeal No. 168/CE/APPL/NOIDA/2011 dated 29.7.2011 passed by Commissioner (Appeals) Central Excise, NOIDA]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Uniword Telecom Limited Appellant

Vs.

CCE, NOIDA Respondent

Appearance:
Present for the Appellant: Shri Rakshit Verma, Advocate (Proxy)
Present for the Respondent: Shri Pawan Kumar Singh (Supdt.) (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**

Date of Hearing/Decision: 28/03/2016

Final ORDER NO. 70869/2016

Per: Anil Choudhary

The appellant is in appeal against Order-in-Appeal dated 29/7/2011 filed by the Commissioner (Appeals) Customs and Central Excise, NOIDA by which the rejection of refund claim have been upheld on the ground of unjust enrichment.

2. The brief facts are that the appellant are manufacturer of Telephone Equipment among others, during the year 2002 had been clearing telephone equipment to BSNL/MTNL/DOT and assessing the same under section 4A of the Central Excise Act 1944. The revenue issued a notice to the appellants stating that the said goods were required to be assessed under section 4 of the Central Excise Act, 1944 and also demanding differential duty involved on the goods so cleared by the appellant under section 4A of the said Act. Thereafter during the period 25/1/2003 to 31/3/2003, the appellant cleared Telephone equipments on payment of duty under Section 4 of the Central Excise Act, 1944 and paid the same under protest. Simultaneously appellant contested the revenue's contention and this Tribunal decided the issue in favour of the appellant, holding that the assessee had rightly valued or assessed the goods under section 4A of the Act. In appeal of the Revenue before the Honourable Supreme Court, the matter was decided in favour of the appellant vide judgement dated 22/8/2007. Thereafter the appellant claimed refund of Rs.1,77,812/- vide the refund claim dated 10/3/2008 on account of excess duty paid by them under protest. The said claim of refund was rejected on the ground of unjust enrichment by the Assistant Commissioner holding that the appellant failed to submit any documentary evidence for rebuttable presumption under section 11 B of the Act. Being aggrieved the appellant preferred

appeal before ld. Commissioner (Appeals) on the grounds among others that the Range Superintendent asked to produce evidence of printing of MRP on the goods to which it was submitted that such goods are no longer in possession of the appellant as the same having supplied long back. It was of the further stated that the Range Superintendent have not examined the ledger and /or books of account of the appellant, from which it will be evident that the appellant have not collected the differential duty, as the buyer of the goods continued to pay the duty as per the valuation under sections 4A of the Act. The ld. Commissioner (Appeals) have been pleased to reject the appeal holding that the appellant have not produced any documentary evidence either before the Adjudicating Authority or in appeal before him to prove that the excess duty of which refund is claimed have not been recovered from the buyers. Being aggrieved the appellant is in appeal before this Tribunal.

3. The appellant is absent inspite of notice. They sought adjournments repeatedly which was allowed on 27/8/15 and again on 2/11/15 and again on 26/11/2015 and also on 26/01/2016 by way of last chance. Accordingly it is decided to dispose of the appeal ex-parte with the help of Learnedly A.R. and the appeal records. Heard Learned A.R. for the Revenue, who relies on the impugned order, and perused the records.

4. I find from the grounds of appeal that the appellant have specifically mentioned that they have raised total bill amounts as per

the Invoices for the period in question amounting to Rs.31,11,678/- against which their buyer only paid an amount of Rs.29,33,866/-. Thus there is a apparent difference of amount not received Rs.1,77,812/- which is the amount claimed as refund. In view of the arithmetical data given by the appellant, it appears that there are been failure by the courts below to examine the evidence, that is the books of account and ledgers of the appellant. Accordingly for the extending substantial justice to the appellant, I set aside the impugned order and remit the matter back to the Adjudicating Authority with direction to call for and examine the Ledger and Books of Accounts, including the Balance Sheets, along with Certificate from Chartered Accountant. If the amount is still lying outstanding and or receivable in the books of accounts, in that case it cannot be said that the appellant have received the amount from its buyers, attracting the provisions of unjust enrichment. The Appellant is also directed to appear before the adjudicating authority within a period of 60 (sixty) days from the date of receipt of a copy of this order and seek an opportunity of hearing.

5. The appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

Certified true Copy
24.10.16