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: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71087/2016-SM[BR] dated 28/11/2016

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/2898/2010	CCE MEERUT OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
		Name and Address of Respondent
2		SANJAY ENGG. & FABRICATORS PVT. LTD. 1910-F, INDUSTRIAL ESTATE, MEERUT ROAD, MUZAFFARNAGAR. (U.P.),,

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

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy ~~15 Guard File~~

Asstt. Registrar

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

Appeal No.E/2898/2010-[SM]

Arising out of Order-in-Appeal No.87-CE/MRT-I/2010-11 dated 23.06.2010 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

For approval and signature:

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

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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Commissioner of Central Excise, Meerut-II

...APPELLANT(S)

VERSUS

M/s Sanjay Engg. & Fabricators Pvt. Ltd.

...RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)
None for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 28.11.2016

FINAL ORDER NO.- 71087/2016

Per Mr. Anil Choudhary :

The Revenue have filed this appeal ~~is~~ on the ground that the Commissioner appeals should have decided the issue and not remanded to the adjudicating authority.

2. The brief facts are that the respondent-assessee had made some defaults in payment of duty during the month of January, 2008, February, 2008 and March, 2008. It was case of the Revenue that the respondent had not paid that tax, admittedly, payable as per the return filed. The tax was admittedly short paid. Before the learned Commissioner (Appeals), the respondent claimed that the demand of Rs.29,50,010/- is wrong as the assessee ~~and~~ had also paid an amount of Rs.10,25,000/- before the issue of show cause notice, which credit was not given. Hence, the demand should have been for Rs.19,25, 009/- only against the adjudicated demand of Rs.29,50,010. The assessee also submitted a chart showing the details of payment made along with the photocopies of relevant extracts from Account Current/Cenvat Account, Challans etc. in support thereof. The Ld. Commissioner (Appeals) found the argument of assessee convincing and there was need for the determination of the outstanding amount. As regards penalty, the Ld. Commissioner observed that he is unable to accept the assessee's contention that panel provisions under Rule 25 of Central Excise Rules, 2002 are not invokable. Accordingly, in the interest of Justice, he observed that the matter needs to go back to the Adjudicating Authority for redetermination of the outstanding tax, liability and for re-fixation of penalty payable accordingly.

3. Heard the Ld. AR for Revenue, who supports the grounds of appeal.

4. Having considered the rival contentions and on perusal of the records, I deem it fit to dispose of the appeal in absence of the respondent, who is absent in spite of issue of notice. I find that Ld. Commissioner (Appeals) have remanded the matter only for verifying the calculation of tax, payable as the adjudicating authority, is more equipped being in possession of the original records to verify the fact of tax paid and/or payable. Accordingly, I find that the Commissioner (Appeals) have rightly remanded for verification of the exact amount of liability or duty payable by the assessee. Accordingly, I dismiss this appeal. The adjudicating authority is directed to complete the verification and issue necessary order/demand notice to the respondent-assessee within a period of 60 days from the date of receipt of a copy of this order, if not done so far.

(Dictated & Pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

Mishra

प्रमाणित प्रति / Certified True Copy

8.12

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