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: 03/11/2016

To

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

Final Order No. A/71025/2016-EX[DB] dated 29/09/2016

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/CROSS/252/2004	E/2924/2004	CCE ALLAHABAD 38,M.G.MARG CIVIL LINES ALLAHABAD
			Name and Address of Respondent
2			I.T.I.(TED)LTD. NAINI.ALLAHABAD U.P.,

Copy To

3 Advocate(s) / Consultant(s): SH S.P.OJHA,CONST
299, BAGAHMBARI HOUSING SCHEME
ALLAHPUR, ALLAHABAD

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

23-11-16

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

E/CROSS/252/2004 &
Appeal No. : E/2924/2004-EX[DB]

Arising out of OIO No. MP(Dem-21/2002) 19 of 2003 dated 03.06.2003 passed by Commissioner, Central Excise, Allahabad.

For approval and signature:

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

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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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C.C.E., Allahabad ...APPELLANT

VERSUS

M/s ITI Ltd., (TED_ Naini, Allahabad (U.P.) ...RESPONDENT

APPEARANCE

Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department
Shri J.P. Ojha, Consultant for the assessee-respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 29. 09. 2016

FINAL ORDER NO. 71025/2016

Per Mr. Anil G. Shakkarwar :

The brief facts of the case are that the respondents were issued with a show cause notice dated 06.02.2003. The respondents were engaged in manufacture of Transmission equipment and parts thereof classifiable under Chapter sub-heading No. 8517.00 of Central Excise Tariff Act, 1985. The respondent supplied Synchronous Transport Module (STM) to D.O.T and M.T.N.L. The STM equipment contained parts manufactured by respondent and some parts were bought out and supplied. The respondent cleared goods manufactured by them on payment of appropriate Central Excise Duty and simultaneously raised another invoice for bought out goods such as L.C.T. and Network Manager. They did not pay any duty on bought out goods. Revenue contended that the value of bought out goods cleared alongwith the goods manufactured by respondent should be included in the assessable value of the goods manufactured by the respondent. Therefore, through above stated show cause notice they raised demand of Rs. 8,31,05,821/- of Central Excise Duty under the proviso to Section 11A of Central Excise Act, 1944 alongwith other proposals. The issue was decided through Order-in-Original No. MP(Dem-21/2003) 19 of 2003 dated 03.06.2003. The Original Authority has relied upon the ruling by Hon'ble Apex Court in the case of ***PSI Data Systems Ltd. Vs. CCE 1997(89)ELT 3(SC)*** wherein the Apex Court ruled that :-

"A computer may not be capable of effective functioning unless loaded with software such as disk, floppies and CD ROM but that is not to say that those are parts of computer or to hold that, if they sold alongwith computer, their value must form the part of the assessable value of the computer for the purposes of excise duty."

Relying on the said ruling by Hon'ble Apex court, the Original Authority dropped the demand. Aggrieved by the order of Original Authority Revenue, is before this Tribunal.

2. Heard the learned A.R. on behalf of Revenue, he has reiterated the grounds of appeal.

3. Heard the learned counsel for the respondent. The learned counsel for the respondent reiterated their grounds of cross objection submitted through Cross Objection No. 252/2004. The respondent submitted through the cross objection that the N.M.S. or L.C.T. are installed separately to monitor the system of STM. N.M.S. and L.C.T. softwares loaded on computers does not interfere with the normal telephone traffic and transmission equipments such as STM-1, STM-4 and STM-16 manufactured and supplied by them on whose assessable value duty was paid and that the respondents manufacture transmission equipment which are capable of functioning, without N.M.S. and L.C.T. software and that therefore they are independent entities and that just because they are supplied together, the value of N.M.S. and L.C.T. cannot become eligible to be included in the value of goods manufactured by them.

4. We have taken into consideration the rival contentions. We find force in the submission in the cross objection. We could not find any force in the grounds of Revenue. We, therefore, do not find any reason to interfere with the reasoned order passed by the Original Authority. We, therefore dismiss the appeal filed by Revenue and hold that the respondent shall be eligible for consequential relief, as per paw.

Cross objections also stand disposed of.

(Pronounced and dictated in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy

16.11

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