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: 24/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70994-70995/2016-EX[DB] dated 05/10/2016

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/2926/2007	TWINKLE LAMPS INDUSTRIES (P) LTD. D-204,SECTOR-10, NOIDA (U.P)
2	E/2927/2007	TWINKLE LAMPS INDUSTRIES (P) LTD. D-204,SECTOR-10, NOIDA (UP)
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Renu Gupta,Advocate
180, SECTOR-3, R.K.PURAM,
NEW DELHI,
110022

24/10/16

O/C

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE [illegible] TAX
[illegible]
38, M. G. [illegible], ALLAHABAD 211001.

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal No.E/2926 & 2927/2007-EX[DB]

Arising out of Order-in-Appeal Nos.96 & 97-CE/NOIDA/2007 dated 29.08.2007 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II (Noida).

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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M/s Twinkle Lamps Industries (P) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida ...RESPONDENT (S)

APPEARANCE:

Shri Rajesh Chibber, Advocate for the Appellant (s)
Shri D.K. Deb Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 05.10.2016

FINAL ORDER NO.- 70994-70995/2016

Per Mr. Anil G. Shakkarwar:

The present two appeals are arising out of common impugned Order-in-Appeal No.96&97-CE/NOIDA/2007 dated 29.08.2007 and therefore, they are taken together for decision.

2. The brief facts of the case are that the appellants are manufacturers of Lamps covered under MRP based assessment. The appellant adopted value arrived at after deducting the abatement allowed by notification issued under Sub-Section 1 of Section 4A of Central Excise Act, 1944 and arrived at assessable value and paid duty accordingly.

3. It appeared to Revenue that the goods were supplied to Government institutions and they were not meant for retail sale and therefore, assessment under Section 4A of the Central Excise Act, 1944 was inappropriate and therefore, through show cause notice dated 31.03.2004 demanded duty of Rs.5,12,117/-, on the basis of excisable value arrived at by applying provisions of Section 4 of the Central Excise Act, 1944, during the period from 1999-2000 to 2001-02. The said show cause notice was adjudicated through Order-in-Original No.13/Joint Commissioner/05 dated 28.11.2005, wherein the Original Authority confirmed the demand and imposed equal penalty.

4. The appellant preferred an appeal before Ld. Commissioner (Appeal). The ld. Commissioner (Appeal) rejected the appeal through Order-in-Appeal No.148/2006 dated 08.12.2006. The

appellant preferred appeal before this Tribunal against said Order-in-Appeal dated 08.12.2006. This Tribunal through Final Order No.161/07-EX dated 18.04.2007, remanded the matter back to Ld. Commissioner (Appeal), who decided the appeal on merit. In the meantime, another show cause notice on similar grounds was issued on 19.09.2006, demanding Central Excise duty of Rs.6,29,575/- for the period from 2002-03. The said show-cause-notice was decided through Order-in-Original No.01/ADC/NOIDA/07 dated 22.01.2007, wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said Order-in-Original, appellant preferred appeal before the Ld. Commissioner(Appeal). The ld. Commissioner (Appeal) decided both appeals together, one remanded by this Tribunal and the other arisen out of Order-in-Original dated 22.01.2007. The Ld. Commissioner (Appeal) rejected both the appeals. Challenging the order of Ld. Commissioner (Appeal), the appellant is before this Tribunal.

4. Heard the learned counsel, who has submitted that there is no dispute in the show-cause-notice that the goods were included in the notification issued under Sub-Section 1 of Section 4A of the Central Excise Act, 1944. There is no dispute in the show cause notice that admissible abatement was availed while assessing the goods by the appellant. The only dispute is that the differential duty was arrived at by subjecting the said goods to the

provisions of Section 4 of Central Excise Act, 1944 and there are large number of case laws in their favour.

5. Heard the Ld. DR for Revenue who has supported the impugned Order-in-Appeal.

6. We have taken into consideration the rival contentions. We have also gone through the provisions of Section 4A of Central Excise Act, 1944. We find that Sub-Section 2 of Section 4A provides that in respect of goods specified under Sub-Section 1 of Section 4A of the Central Excise Act, 1944, if the duty of Excise is chargeable with reference to value then notwithstanding anything contend in Section 4 of Central Excise Act, 1944 such value shall be deemed to be retail sale price, declared on such goods less, such amount of abatement from such retail prices as Central Government may allow by notification in the Official Gazette. We find that there are no allegations in the show cause notices that the consideration price received was more than the MRP declared on the packing or the abatement availed was more than allowed by notification in the official gazette. We find that when all such requirements of Sub-Section 2 of Section 4 are fulfilled then valuation as per said sub-Section 2 shall be equal to the sales price declared less the amount of abatement and there is no scope for invoking provisions of Section 4 of the Central Excise Act, 1944 for such assessment. We, therefore, hold that both the show-cause-

notices are unsustainable. In view of the same, we allow both the appeals with consequential relief to the appellants as per Law.

(Dictated and Pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

Certified True Copy
26.10.16