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: 07/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70951-70952/2016-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/3708/2006	CCE NOIDA OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL EXCISE AND SERVICE TAX, C-56/42, SECTOR-62, NOIDA - 201307
2	E/3714/2006	L G ELECTRONICS INDIA PVT LTD PLOT NO 51, UDYOG VIHAR, SURAJPUR-KASNA ROAD, GREATAR NOIDA,UTTAR PRADESH.
		Name and Address of Respondent
3		L.G.ELECTRONICS INDIA (P) LTD 51, UDYOG VIHAR, GREATAR NOIDA.,,
4		-C.C.E.NOIDA OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL EXCISE AND SERVICE TAX, C-56/42, SECTOR-62, NOIDA - 201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014

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

7/10/16

ISSUED ON

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

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/3714 & 3708/2006-EX[DB]

Arising out of Order-in-Appeal Nos.125-CE/Appeal/NOIDA/2006 dated 30.08.2006 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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 L.G. Electronics India Pvt. Ltd. (in Appeal No.3714/2006)
Commissioner of Central Excise, Noida (in Appeal No.3708/2006)
...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida (in Appeal No.3714/2006)
M/s L.G. Electronics India Pvt. Ltd. (in Appeal No.3708/2006)
...RESPONDENT (S)

APPEARANCE:

Shri Atul Gupta & Shr Hrishikesh, Advocates for the Appellant (s)
Shri Rajiv Ranjan Joint Commr. (A.R.) for the Department (s)

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.- 70951-70952/2016

Per Mr. Anil G. Shakkarwar:

The present two appeals are arising out of same impugned order which is Order-in-Appeal No.125-CE/APPL/NOIDA/2006 dated 30.08.2006 and therefore, they are taken together for decision.

2. The brief facts of the case are that M/s L.G. Electronics India Pvt. Ltd. (L.G.) were engaged in the manufacture of colour monitors. During the period from August, 2002 to July, 2003, they cleared their goods from the factory on payment of duty to their depots and when they cleared the goods to customers from depot, the price, at which the goods were sold to the independent customers from depot and the Excise duty payable worked out on the transaction value based on the invoice prices at which the goods were sold from the depot to the independent customers, resulted in excess payment of Excise duty at the time of clearance of goods from the factory. Therefore, they filed a claim of refund of Rs.1,71,19,946/- on 05.11.2003 in respect of excess paid Central Excise Duty for the period from August, 2002 to July, 2003. The Original Authority issued them with a show-cause-notice stating that the assessment was made final by the claimant and duty was not paid under protest and the applicant did not resorted to Provisional Assessment. They further alleged in the show cause notice that all the documents, in support of the refund claim, were not filed at the time of lodging the claim. The said refund

application was adjudicated through memorandum Order No.R-03DC/NIV/2006 dated 28.02.2006 passed by Deputy Commissioner Customs & Central Excise, Division-II, Noida. The Original Authority has held that the original refund claim was returned by the Original Authority to M/s L.G. by letter dated 30.09.2004 and M/s L.G. re-submitted the refund claim on 28.10.2004 and that the claimant did not furnish the invoices for the relevant period and they submitted only sample invoices for the relevant period. The Original Authority has found that on 05.11.2003 incomplete claim was filed and rejected the claim, stating that the claim was hit by bar of limitation. M/s L.G. carried the matter before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) through impugned order, decided the appeal. The Ld. Commissioner has held that M/s L.G. was entitled for refund in respect of discount passed on to the buyers from depot subsequent to the clearance of the goods from the factory. The Ld. Commissioner (Appeals) further held that the said refund claim was time barred for the period prior to 31.05.2003 because the claimants submitted supporting documents on 31.05.2004. He has further held that M/s L.G. was eligible for the refund pertaining the period from 31.05.2003 to July, 2003.

3. Aggrieved by the said order, the Revenue preferred an appeal bearing No.E/3708/2006. The contention of the Revenue is that allowing of the refund from 31.05.2003 to July, 2003, amounting to Rs.42,23,180.40/- is erroneous. M/s L.G. preferred an appeal

which is bearing No.E/3714/2006. M/s L.G. prayed in their appeal to set aside that portion of the impugned order that is against them and grant refund for the period from 01.08.2002 to 30.05.2003 along with interest.

4. Heard both sides. The learned counsel for M/S L.G. has argued that though assessment were final when the goods were cleared from the factory to depot, the Ld. Commissioner (Appeal) has rightly held that refund is due because the transaction value is arrived at only when the goods were cleared from depot to the buyers. They further contended that the order of Ld. Commissioner (Appeals) holding that the refund for the period earlier to 31.05.2003, is hit by limitation is contrary to the Law since it is a decided issue that the day on which the application is filed is the date of filing of application. They had filed application on 05.11.2003. Therefore, the duty is paid from 05.11.2002 onwards within the time limit.

6. The Ld. DR for Revenue has submitted that the Ld. Commissioner (Appeals) has erred in relying on the Tribunal order in the case of IPCA Laboratories 2005 (180) E.L.T. 33(Tri-Del).

6. We have taken into consideration the rival contentions. We find that when the goods were cleared from factory to depot, there was no sale involved and there was no data available to arrive at transaction value. When the goods were cleared from depot to the independent buyers the data to arrive at transaction value was for the first time became available to M/s L.G. to calculate duty due, it

is undisputed that on the basis of such duty due the said refund arose. Therefore, the contention of the Revenue is that the Ld. Commissioner (Appeals) has erred in relying on this Tribunal's findings in the case of IPCA Laboratories Ltd., is not on strong footing. We accept the contention of the counsel for M/s L.G. that it is settled Law that the date of filing refund claim whether complete or not is ~~completion of is~~ the date to arrive at limitation period and it is undisputed that the refund claim was filed on 05.11.2003. We, therefore, hold that M/s L.G. is eligible for refund of duty paid by them on the subject goods from 05.11.2002 to the end of July, 2003. We remand the matter to Original Authority to examine the records and arrive at the refund payable for the period from 05.11.2002 to 31st July, 2003 claimed by M/s L.G. through their application dated 05.11.2003. In the above terms the appeal, filed by M/s L.G. is partially allowed and we reject the appeal filed by the Revenue.

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
25/10/16
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