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/71098-71099/2016-EX[DB] 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/912/2009	CCE NOIDA C-56/42, Sector-62, Noida-201307
2	E/913/2009	CCE NOIDA C-56/42, Sector-62, Noida-201307
		Name and Address of Respondent
3		SAMSUNG INDIA ELECTRONICS PVT. LTD. B-1, SECTOR-81, NOIDA (U.P.),,
4		SAMSUNG INDIA ELECTRONICS PVT. LTD. B-1, SECTOR-81, NOIDA (U.P.),,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES, COLVIN ROAD, LOHIA MARG 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 Nos.E/912 & 913/2009-EX[DB]

Arising out of Order-in-Appeal Nos.186-187/CE/Noida/2008 dated 30.12.2008 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

Commissioner of Central Excise, Noida

...APPELLANT(S)

VERSUS

M/s Samsung India Electronics Pvt. Ltd.

...RESPONDENT (S)

APPEARANCE:

Shri T.K. Sikdar, Asstt. Commr. (AR) for the Department
Shri Atul Gupta, Advocate for the Respondent (s)

CORAM:

HON'BLE SHRI JUSTICE DR. SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING:- 28.11.2016
DATE OF PRONOUNCEMENT: 30-11-2016
FINAL ORDER Nos.- 71098 - 71099/2016

Per Mr. Anil G. Shakkarwar:

The above stated two appeals are filed by Revenue against Order-in-Appeal Nos.186-187/CE/Noida/2008 dated 30.12.2008.

2. The brief facts of the case are that respondents are engaged in the manufacture of Computer Monitors. The provisional assessment for the financial years 2002-03 and 2003-04 were finalized by Deputy Commissioner vide order dated 27.02.2004 and by Joint Commissioner vide order dated 08.07.2005. Subsequently, on 11.05.2004 and 22.12.2005, the respondents filed two claims for refund of amount of Rs.83,65,016/- and

Rs1,03,69,969 respectively, claiming that the said refund claims were arising out of consequences of finalization of provisional assessments through said Orders dated 27.02.2004 and 08.07.2005, Revenue issued the respondents with show-cause-notice proposing to rejected the said refund applications. Through Order-in-Original Nos.608/AC/N-IV/2007-08 & 609/AC/N-IV/2007-08 dated 31.12.2008, the Original Authority after going through written submission and examination of the required documents and records allowed the claim of refund of Rs.83,65,016 & Rs.1,03,69,969/- and ordered that the said amount should be credited to their Cenvat Account. Aggrieved by the said order, Revenue preferred appeal before the Ld. Commissioner (Appeal).

3. The grounds of appeal before Ld. Commissioner (Appeal) were that it appeared to Revenue that above said both appeals were not legal and proper in the absence of examination of unjust enrichment issue with respect to the accounts and Balance-sheet in respect of respondent. The contention of Revenue was contradicted by respondent stating that at the time of finalization of provisional assessment, relevant documentary evidences were examined by the Original Authority. The respondent further contended before First Appellate Authority that the department had accepted the orders of finalization of provisional assessments and at a later stage, they cannot raise objection on refund arising out of such finalization of assessments. The first

Appellate Authority has held that the Original Authority has properly examined the issue of unjust enrichment and only on being fully satisfied, granted refunds. The first Appellate Authority has rejected the appeals filed by Revenue. Aggrieved by the said Order-in-Appeal, the Revenue is before this Tribunal.

4. Heard the Ld. DR for Revenue. He has reiterated the grounds, which is the repetition of grounds before the First Appellate Authority.

5. The learned counsel for the respondent submitted that once the order for finalization of assessment is issued and it is accepted by the Department, then department cannot question the quantum of refund arising out of it after filing of the refund claim. He has further contended that the issue of unjust enrichment has been properly examined at the original and appellate stage and therefore, department's contention in the grounds of appeal in respect of unjust enrichment is not tenable in Law. He contended that after thoroughly verifying all the evidences, it was held that duty burden had not been passed on to Customers and that the Revenue has not placed any evidence to rebut the findings of lower Authorities through grounds of Appeal before this Tribunal.

6. Having considered the rival contentions, we do not find any merit in the grounds of appeal extended by Revenue. Therefore, we do not interfere with the impugned Orders-in-Appeal and

reject both the appeals filed by Revenue. The respondent shall be entitled to consequential benefits, as per Law.

(Pronounced in the open Court on 30-11-2016)

Sd

(Anil G. Shakkarwar)

Member (Technical)

Sd

(Justice Dr. Satish Chandra)

President

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