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: 07/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71110-71112/2016-EX[DB] dated 29/11/2016

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/975/2009	**XEROX INDIA LIMITED.** BARREILY ROAD, MODIPUR, RAMPUR.
2	E/976/2009	**SH. A.K. SRIVASTAVA ,SENIOR MANAGER (DISTRIBUTION) OF** M/S XEROX INDIA LTD.BAREILY ROAD, MODIPUR, RAMPUR, (U.P.)
3	E/977/2009	**SH. S.K.GUPTA, FINANCE CONTROLLER (DISTRIBUTION) OF** M/S XEROX INDIA LTD.BAREILY ROAD, MODIPUR, RAMPUR, (U.P.)
		Name and Address of Respondent
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
5		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
6		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
3/1A/3, OPP AUTO SALES
COLVIN ROAD, LOHIA MARG
ALLAHABAD-211001

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

16 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad -500082

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/975-977/2009-EX[DB]

(Arising out of Order-in-Original No. 57/2008 C.Ex. dated 28.11.2008 passed by Commissioner of Central Excise & Customs, Meerut-I)

M/s Xerox India Ltd.

Shri A.K. Srivastava, Senior Manager (Distribution) of,

Shri S.K. Gupta, Finance Controller (Distribution) of, **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri V. Lakshmi Kumaran, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR) for Respondent

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 29/11/2016
Date of Decision : 29/11/2016

Final ORDER NO. 71110-71112/2016

Per: Dr. Satish Chandra

The present appeal is filed against the impugned Order-in-Original No.57/2008 C.Ex. dated 28.11.2008. The period of dispute is April 2002 to November 2006.

2. The brief facts of the case are that the appellants have imported various models of digital Multi-functional printers, Copiers and Photocopiers-cum-printers (machines for short) from different units/warehouses of M/s. Xerox Corp located in different countries all over the world. The aforesaid goods, in the condition in which they

were imported were either in one consignment as a whole or in split packing, say, two or three boxes containing various parts/ modules constituting complete machines. They were assessed as complete machines at the time of import under CTH 8471.

2.1 After import, they were sold and installed at the premises of various customers outside the jurisdiction of Meerut-II Commissionerate. The appellant did not installed/sale any machine within the jurisdiction of Meerut-II Commissionerate which has been notified under Notification No. 39/2001-CE (NT) dated 26.06.2001 read with Notification No. 14/2002-CE (NT) dated 08.03.2002.

3. The Commissioner in his order observed that during the period under reference M/s XIL imported various parts/ modules/ accessories of digital multi functional printers, copiers and photocopiers cum printers (referred as "machines") of different models from units/ warehouses of M/s Xerox Corporation and other partners of M/s Xerox Corp located in different countries and all over the world. Some of these machines were also imported by M/s XIL in Semi Knocked Down (SKD) condition and incomplete machine also. These imports were effected on the basis of specific requirement of customers in India as per Purchase Orders issued by the appellant in this regard. It has been alleged in the SCN that the appellant assembled these parts/modules/accessories so imported into a complete machine which amounted to manufacture. But the appellant did not pay any duty on such activities undertaken by them in the name of trading of the said goods.

4. Being aggrieved the appellant has filed these appeals before this Tribunal. This Tribunal vide Final Order No.815-817/2010-EX dated 30.11.2010 has decided the appeal against the appellant and dismissed all the appeals. Being aggrieved, the appellant has filed appeal before Hon'ble Allahabad High Court, who vide its order dated 25.07.2011 in Central Excise Appeal No.34/2011, remanded the matter back to this Tribunal by following observation:-

"11. We have considered the respectful submissions, and find that there are contrary opinions expressed by the Tribunals on the same facts and evidence, which were placed before them. Even if the Cestat, New Delhi did not agree with the reasoning given by the CESTAT, Bangalore, in similar proceedings on the same facts, it should have followed the practice of referring the matter to a Larger Bench. Apart from institutional integrity, we also find that the same Company, in respect of same period in the same activities, could not be subjected to different opinions expressed by the Tribunal, causing doubts and confusion over the liability. Such conflicting opinions by different benches of the Tribunal are not conducive to business and trade and can cause adverse effect on the economy of the country.

12. The Supreme Court in Gammon India Ltd. (supra), has relied upon three Judges Bench of the Supreme Court in Sub-Inspector Rooplal and Another v. Lt. Governor & Others [2000 (1) SCC 644], in which it was held that a Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a Larger Bench.

13. For the reason given above, we set aside the order of the Customs, Excise & Service Tax Appellate Tribunal to decide the matter in accordance with law. If the bench of CESTAT, New Delhi does not agree with the reasons given by the CESTAT, Bangalore in its order dated 09-11-2009, it may refer the matter to the President of the Tribunal to be referred to a Larger Bench."

In compliance of the said direction, the present appeals have been again restored to the Tribunal.

5. During the course of argument learned counsel Shri V. Lakshmikumaran submits that the order passed by the Hon'ble Allahabad High Court has been challenged by the department before the Hon'ble Supreme Court in Special Appeal No. 6895-97/2012, the same was tagged with another Civil Appeal No.19252/2011, of the assessee pertaining to Hyderabad Branch. Thus, on the issue, the matter is sub-judice before the Hon'ble Supreme Court. When it is so, then liberty is granted to the appellant to come again after having final verdict from Hon'ble Supreme Court, within the prescribe time, if advised so.

6. With the aforesaid liberty the appeal is disposed of.

(Dictated in Court)

—Sd—
(Anil G. Shakkarwar)
Member (Technical)

—Sd—
(Justice Dr. Satish Chandra)
President

akp

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