CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 31/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70127/2016 SM** dated 30/03/2016

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
	E/50545/2015	ELCOMPONICS SALES PVT LTD A-36, SECTOR-58 NOIDA(UP)
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s   SH VIMAL KUMAR GUPTA,ADV
524, USHMA URJA APARTMENT
C-58/3, SECTOR-62
NOIDA(UP)

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), Vaidhyaram Street, T. Nagar, Chennai-17

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

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

14 C.D.R.   15 Office Copy   16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal No.50545/15

Arising out of OIA No.NOI/EXCUS/000/APPL/183/2014-15 dated 07/10/2014 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Noida.

For approval and signature:

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

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

M/s Elcomponics Sales Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & Customs & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Vimal Kumar Gupta, Adv. for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30.03.2016

Final ORDER NO. 70127/2016

CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant is in appeal against order in appeal dated 7/10/14 by which penalty imposed was confirmed for non-filing of ER-6 Returns under Rule 9A (3) of CCR read with Notification 39/2004. Penalty of Rs.64,000/- (@ Rs.4000/- X 16 = Rs.64,000/-) was also imposed for the period April, 2009 to July, 2010.

2. The brief facts are that the appellant is a registered manufacturer availing Cenvat credit on inputs. Show cause notices were issued on the allegation that the appellant have not filed monthly Return in form ER-6 which contains the details of the receipt and consumption of each principal input with reference to output within 10 days from close of each month, for the financial years 2009-2010 & 2010-2011 as prescribed under Rule 9A(3) of CCR. 2004 read with Notification number 39/2004 -CE (NT) dt. 25.11.2004.

3. The ld. Counsel for the appellant urges that the appellant had filed all the returns including the ER 6 returns regularly. ER-1 & ER-6 returns were accompanied by a common covering letter. The ld. Counsel takes me through the copies of covering letters sent with the copy of returns, wherein acknowledgement of revenue official is found both on the covering letter as well as in the space provided for acknowledgement at the end form ER – 1. However, in most of the ER- 6 forms, no separate acknowledgement is given in the space provided for acknowledgement, at the end of the return. It is further case of the appellant that at the time of filing reply to the show cause

notice, they could not produce evidence before the Suptd. (Adjudication) as the concerned Excise clerk had left the job and the management could not readily trace the file and accordingly, could not put up proper defence, in absence of records. Subsequent to the passing of the Order-in-Original, imposing penalty, the appellant could somehow contact the former staff with whose assistance, the concerned filed was traced and the evidence of having filed the relevant form ER 6 along with form ER-1, was produced before the ld. Commissioner (Appeals). The ld. Counsel further urges that it is evident from the discussion and findings of the Commissioner (appeals) that these documents were produced before him and that after going through the documents have rejected the same without any reasoned order by observing that, "I have gone through the enclosed documents and no such acknowledgement, specifically in respect of ER 6 was noticed, hence I do not agree with the appellant on this point."

4. Accordingly, the ld. Counsel states that the ld. Commissioner has erred in rejecting the evidence before him, without any valid reason and accordingly, under the facts that the ER-1 & ER-6 Returns were filed in time, the impugned order is fit to be set aside.

5. The ld.A.R. for the Revenue relies on the impugned order. He further states that there is no acknowledgement in the space provided for acknowledgement in ER- 6 Returns. Accordingly, the filing of the same is doubtful.

6. Having considered the rival contentions I find that from the documents brought on record, there is sufficient evidence that ER-6 form was filed along with ER 1 Returns. In the common covering letter, the acknowledgement of the official of the Department is there. In this view of the matter, I hold that no adverse inference can be drawn for absence of acknowledgement on the body of the ER 6 Returns. Accordingly I hold that the ld. Commissioner (Appeals) is in error in rejecting the evidence produced before him.

7. Thus, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

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