FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 12/01/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70036-70047/2017-SM[BR] dated 09/01/2017

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/2113/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
2	E/2114/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
3	E/2115/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
4	E/2116/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
5	E/2117/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
6	E/2118/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
7	E/2119/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
8	E/2120/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)
9	E/2121/2009	**ITI LIMITED,** MIRZAPUR ROAD, NAINI, ALLAHABAD (U.P.)

10 E/2122/2009 **ITI LIMITED,**
MIRZAPUR ROAD, NAINI,
ALLAHABAD (U.P.)

11 E/2123/2009 **ITI LIMITED,**
MIRZAPUR ROAD, NAINI,
ALLAHABAD (U.P.)

12 E/2124/2009 **ITI LIMITED,**
MIRZAPUR ROAD, NAINI,
ALLAHABAD (U.P.)

Name and Address of
Respondent

13 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

14 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

15 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

16 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

17 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

18 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

-

19 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

20 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

21 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

22 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

23 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

24 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

Other Appellants and Respondents as per Annexure

Copy To

25 Advocate(s) / Consultant(s):

S. P. Ojha
299, Baghambari Housing Scheme, Allahpur,
Allahabad,
Uttar Pradesh

26 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

36 C.D.R.   37 Office Copy   38 Guard File

Asstt. Registrar

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

APPEAL No. E/2113-2124/2009 -EX[SM]

(Arising out of Order-in-Appeal No. 59-62-CE/ALLD/2009 dated 07/05/2009 & 27-30/CE/ALLD dated 01/02/2010 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s ITI Limited **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri S.P. Ojha, Consultant, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 25/11/2016

FINAL ORDER NO - 70036 - 70047/2017

Per: Anil Choudhary

The present batch of appeals are filed by the appellant - M/s ITI Limited, against Orders-in-Appeal, more-fully mentioned in table below passed by Commissioner (Appeals), Allahabad, refusing the finalization of Provisional Assessment and thereby further refusing the refund. The Consultant, S.P. Ojha, has presented a table in reference to Appeal Nos., Order-in-Appeal No., Duty & Education Cess as follows:-

Sl. No.	Appeal No. in Tribunal	Order-in-Appeal No.	Duty	Education Cess
1	E/2113/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.2,965,929.00/-	Rs.59,326.00/-
2	E/2114/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.4,463,004.00/-	Rs.89,258.00/-
3	E/2115/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.2,283,252.00/-	Rs.45,865.00/-
4	E/2116/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.2,429.00/-	Rs.48.00/-
5	E/2117/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.1,08,703.00/	Rs.2,174.00/-
6	E/2118/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.5,80,072.00/-	Rs.11,601.00/-
7	E/2119/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.2,022,685.00/-	Rs.40,455.00/-
8	E/2120/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.1,071,338.00/-	Rs.21,429.00/-
9	E/2121/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.6,976.00/-	Rs.140.00/-
10	E/2122/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.2,07,557.00/-	Rs.4,151.00/
11	E/2123/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.1,599.00/	Rs.32.00/-
12	E/2124/2009	51 to 58/CE/Alld/2009 dt. 07/05/2009	Rs.1,25,127.00/-	Rs.2,503.00/-
13	E/909/2010	27 to 30/CE/Alld/ dt. 01/02/2010	Rs.11,683.00/-	--
14	E/910/2010	27 to 30/CE/Alld/ dt. 01/02/2010	Rs.3,229.00/-	--
15	E/911/2010	27 to 30/CE/Alld/ dt. 01/02/2010	Rs.1,173.00/-	--
16	E/912/2010	27 to 30/CE/Alld/ dt. 01/02/2010	Rs.94,160.00/-	--

2. The brief facts of the case are that the appellant vide permission letter dated 07.07.1989 was granted permission for Provisional assessment under the Rule 9B of Central Excise Rules, 1944 and accordingly, as directed the appellant had furnished the bond and security to the satisfaction of the authority. The appellant cleared their products during the period 31.03.2006 to 08.04.2006 under provisional assessment to MTNL. That MTNL finalized the rates on 31.01.2007, which were less than the provisional prices. Accordingly, the appellants vide their application dated 02.11.2007 applied for finalization of the provisional assessment and grant of refund amounting to Rs.39,75,016/-. In response, thereto SCN dated 20.12.2007 was issued as it appeared to revenue that the claim for finalization of assessment and refund was time barred under the provisions of Section 11 B of the Central Excise Act, 1944. It was also observed that the appellant appears to have not made any request for granting Provisional Assessment during the relevant period. The SCN was contested on the merits, vide Order-in-Original dated 31.01.2008, the claim for provisional assessment to finalize and refund was rejected as time-barred under section 11`B of the Central Excise Act, 1944. Observing that in view of the new Rules with effect from 01.07.2001, the permission

granted under the old Central Excise Rules, 1944 was no longer effective and thus the refund under Section 11 B of the Act, 1944 is time barred and thus rejected. Being aggrieved the appellant preferred appeal before Ld. Commissioner (Appeals), who was pleased to reject the appeal, upholding the findings of the Assistant Commissioner.

3. Heard the parties.

4. The learned counsel for the appellant, Mr. S.P. Ojha, pointed out that the invoice on which the goods are cleared, clearly mentions that the prices indicated are provisional subject to finalization of rates with the customer. Further, he states that the permission of Provisional Assessment was granted under the old Rules, did not become redundant and remained valid under the provisions of section 38 A of the Central Excise Act, 1944, wherein Clause-C of Section 38A specifically provides that any amendment, repeal, supersession, etc. unless a different intention appears shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any Rule, notification or orders so amended, repealed, superseded or rescinded. He further points out to the correspondence dated 17.03.2010, wherein the Chief Commissioner, Lucknow had referred the matter of provisional assessment of the appellants-ITI, Raibareily,

mentioning the facts of permission for provisional assessment, granted under the facts and circumstances and also admitting that the tender process and the rate finalization takes substantial time, generally, more than a year from the date of supply. Hence, it is not possible for ITI to submit the details to the Department to finalize assessment within the period of six months. Further stating that ITI had admittedly got permission from Chief Commissioner though dated 01.07.2006 to file the necessary details/documents for finalization of provisional assessment beyond the statutory time limit. It is accordingly urged by learned counsel that under the facts and circumstances, the provisional assessment should have been finalized and upon finalization, the refund should have been granted subject to verification.

5. The learned A R for Revenue relies on the impugned order.

6. Having heard the rival contentions, I hold that under the provisions of section 38A (c) the provisional assessment permission granted under the Central Excise Rule 9B in the year 1989, remained valid and continuing upon enforcement of the new Central Excise Rules, 2002. Accordingly, I hold that the denial to finalize the assessment, not treating the same as provisional, is bad and against the provisions of law. I also take notice of the fact that there is no deliberate

delay or latches on the part of the appellant-assessee, in approaching the Revenue for finalization of the assessment. Accordingly, I allow these appeals with directions to the concerned Assistant Commissioner to finalize the Provisional Assessment under the provisions of Rule 7 of Central Excise Rules, 2002 and grant the resultant refund with interest, with effect from three months after 07.11.2007. Accordingly, these batch of appeals stands allowed by way of remand. The appellant will be entitled to consequential benefits, if any, as per Law.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
MEMBER (Judicial)

Ansari

प्रमाणित प्रति / Certified True Copy
20.1.17
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