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: 19/04/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70373/2017-EX[DB] dated 11/04/2017

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/2470/2009	C.C.E, LUCKNOW 7-A, Ashok Marg, Lucknow.
		Name and Address of Respondent
2		MAHEE ELECTRICALS, DEVA ROAD, P.O.-CHINHAT, LUCKNOW. ,,

Copy To
3Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

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

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

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

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

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

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

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

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

Asstt. Registrar

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

APPEAL No. E/2470/2009-EX[DB]

(Arising out of Order-in-Appeal No. 118-CE/LKO/2009 dated 11/05/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

Commissioner of Central Excise, Lucknow **Appellant**

Vs.

M/s Mahee Electricals, **Respondent**

Appearance:

Shri D. K. Deb, Assistant Commissioner (AR), for Appellant
Shri A. P. Mathur, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 11/04/2017

FINAL ORDER NO...70373/2017......

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue against Order-in-Appeal No. 118-CE/LKO/2009 dated 11/05/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the respondents herein were engaged in the manufacture and sale of Electrical Panel Boards falling under Chapter Sub-heading No.8537.00 of the Schedule to Central Excise Tariff Act, 1985. There was an inspection of the factory premises of the respondents on

11/03/2003, on the basis of evidence collected on 11/03/2003, the respondents were issued with a Show Cause Notice dated 31/03/2003 demanding Central Excise duty amounting to Rs.59,786/- for the period of Financial Year 1997-98 invoking the extended period under proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944. Subsequently, on the basis of record seized on 11/03/2003, another Show Cause Notice dated 30/12/2003 was issued by invoking the proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944 for the period of Financial Year 1997-98 to 2001-02 demanding Central Excise duty amounting to Rs.13,31,552/-. The said Show Cause Notice dated 30/12/2003 was adjudicated through Order-in-Original No. 42/Addl./2006 dated 21/11/2006, wherein the respondents contended before Original Authority that the burden was on the Department to prove that assessee has suppressed the facts. The Original Authority confirmed the demand of Rs.13,31,552/- under Sub-section (2) of Section 11A of the Central Excise Act, 1944 and imposed equal penalty. Aggrieved by the said Order-in-Original No. 42/Addl./2006 dated 21/11/2006 the respondents preferred appeal before the Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through Order-in-Appeal No. 118-CE/LKO/2009 dated 11/05/2009 wherein the ld. Commissioner (Appeals) held that Show Cause Notice, invoking the proviso to Sub-section

(1) of Section 11A of the Central Excise Act, 1944, was issued on 31/03/2003 for the period pertaining to Financial Year 1997-98 & subsequently, the Show Cause Notice, invoking the same provisions, was issued on 30/12/2003 on the basis of records already resumed and therefore, subsequent Show Cause Notice dated 30/12/2003 was not sustainable in view of the ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory *Versus* Collector of Central Excise, Andhra Pradesh reported at 2006 (197) E.L.T. 465 (S. C.) and set aside the said Order-in-Original No. 42/Addl./2006 dated 21/11/2006. Aggrieved by the said Order-in-Appeal dated 11/05/2009 Revenue has preferred appeal before this Tribunal.

3. The main grounds of Revenue is that the ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory (Supra) is distinguishable on facts from the present case. Revenue contended that in the second and third Show Cause Notice there was practically repetition of the allegations contained in the first Show Cause Notice. They contended that the period involved in all the Show Cause Notices was from the 1997-98 to 2001-02 and that was not the case in the present case.

4. Heard the ld. D. R. who has presented the grounds of appeal.

5. Heard the ld. Counsel for the appellants who has submitted that entire facts come to the knowledge of Revenue

before they were issued with the Show Cause Notice dated 31/03/2003.

6. Having considered the rival contentions and on perusal of the records, we find that the principle laid down by Hon'ble Supreme Court in the case of Nizam Sugar Factory (Supra) is that once a Show Cause Notice is issued by invoking the provisions for extended period on the basis of suppression of facts then the same facts cannot be come grounds for issue of subsequent Show Cause Notice invoking proviso for extended period. Since the entire records on the basis of which both the Show Cause Notices were issued came within the knowledge of Revenue on 11/03/2003, the impugned Show Cause Notice dated 30/12/2003 is not tenable in view of ruling by Hon'ble Supreme Court in the above stated case of Nizam Sugar Factory. We, therefore, dismiss the appeal filed by Revenue. The respondents shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

Ansari

प्रमाणित प्रति / Certified True Copy
03/05/2017
सहायक पंजीयक / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
3.., एम. जी. मार्ग, इलाहाबाद-211001
3.., M. G. MARG, ALLAHABAD-211001