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: 05/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70002-70003/2017-SM[BR] dated 03/01/2017

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/3038/2011	MIRZAPUR ELECTRICAL INDUSTRIES LTD Sabri Road, Mirzapur(UP)
2	E/3039/2011	SH RAVI KUMAR AGARWAL,DIRECTOR Sabri Road, Mirzapur(UP)
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

5Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL
LINES, ALLAHABAD (U.P.)-
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/3038 & 3039/2011-EX[SM]

Arising out of OIA Nos. 158-162/CE/APPL/ALLD/2011, dated 13.09.2011 passed by Commissioner (Appeals), Central Excise, Allahabad.

I. Mirzapur Electricals Industries Ltd.
II. Sh. Ravi Kumar Agarwal, Director.

...APPELLANTS

VERSUS

C.C.E. -Allahabad ...RESPONDENT

APPEARANCE

Shri Stuti Saggi, Advocate for the appellants.
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department.

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 03. 01. 2017

FINAL ORDER NO. 70002 and 70003/2017

Per Mr. Anil G. Shakkarwar :

The present two appeals are filed against the Order-in-Appeal Nos. 158-162/CE/APPL/ALLD/2011 dated 13.09.2011 passed in respect of both the appellants. Therefore, both the appeals are taken together for decision.

2. The brief facts of the case are that, M/s. Mirzapur Electrical Industries Ltd. (MEIL) were engaged in the manufacture of transformers and parts thereof. The officers of Central Excise visited factory premises on 11.08.2009. On inspection and after recording

statements, show cause notice dated 20.01.2010 was issued through which MEIL was called upon to show cause as to why seized excisable goods (transformers) valued at Rs. 31.90 lakhs should not be confiscated and why short paid Central Excise duty amounting to Rs. 3,87,302/- and non paid Central Excise duty amounting to Rs. 1,53,676/- should not be recovered from them. Further Shri Ravi Kumar Agarwal, Director was called upon to show cause as to why penalty should not be impose upon him. The said show cause notice was adjudicated through Order-in-Original No. MP(Dem-07/2010) 163 of 2010 dated 26.11.2010. The Original Authority has stated that the noticee never submitted any reply to the show cause notice nor they ever turned up for personal hearing and therefore he decided the issue on the basis of available records. The Original Authority confirmed the demands and imposed equal penalty. Further seized goods were confiscated and amount of Rs. 8,98,186/- deposited as bank guarantee was appropriated in lieu of confiscation and Shri Ravi Kumar Agarwal was imposed with penalty of Rs. 25,000/-. Aggrieved by the said order, appellants preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 13.09.2011. The learned Commissioner (Appeals) upheld the Order-in-Original in respect of both appellants. Aggrieved by the said Order-in-Appeal, appellants are before this Tribunal.

3. Learned counsel for the appellants submitted that the goods which were seized were within the factory premises and they had

not been removed from the factory premises so they were not liable for confiscation and therefore show cause notice itself is not sustainable. She further submitted copy of ER-I Returns for the months of August, 2008, June, 2009 and July, 2009 and argued that the short paid Central Excise duty as per table 1 of page 4 of said show cause notice already stands paid as per the record of ER-I Returns for the month of August, 2008. The learned counsel further argued that the short paid Central Excise duty stated in table 2 on page 4 of the show cause notice also stands paid as reflected through ER-I Returns for the month of June, 2009 and July, 2009 and therefore the show cause notice is not sustainable even on that count.

4. Learned D.R. has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records I find that the Original Authority has decided the issue on the basis of records available with him. The copy of the returns submitted before this Tribunal today indicates that the duty demanded in the show cause notice was paid. However, the Original Authority did not have benefited of such evidences before him. I, therefore, remand the matter back to the Original Authority who shall consider the evidence and re-adjudicate the case after giving opportunity to the appellants. Both the appellants are directed to submit their defence reply alongwith evidence before the Original Authority within sixty days from the date of receipt of this order. The Original Authority to offer hearing to both the appellants within

thirty days from the date of submission of such defence before him and adjudicate the matter within another one month. With this direction, the matter is remanded to the Original Authority by allowing the appeals by way of remand.

(Pronounced and dictated in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Patel/-

प्रमाणित प्रति / Certified True Copy

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