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: 17/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70489/2017-EX[DB] dated 03/05/2017

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/3361/2006	PANKAJ GAS CYLINDERS LTD E-12,Site IV,Indl Area,Sahibabad,Ghaziabad.
		Name and Address of Respondent
2		-C.C.E.GHAZIABAD CGO Complex-II,Kamla Nehru Nagar,Ghaziabad.

Copy To

3Advocate(s) / Consultant(s):

HARSH VARDHAN GUPTA
& VIVEK SARIN
CHAMBER NO-73, HIGH
COURT ALLAHABAD

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/3361/2006-EX[DB]

(Arising out of Order-in-Appeal No. 100-CE/GZB/2006 dated 20/07/2006 passed by Commissioner of Customs & Central Excise (Appeals), Ghaziabad)

M/s Pankaj Gas Cylinders Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Vivek Sarin, Advocate &
Shri Harsh Gupta, Advocate, for Appellant
Shri Sandeep Kumar Singh, Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 03/05/2017

FINAL ORDER NO..70488/2017...........

Per: Anil G. Shakkarwar

The present appeal filed by appellant, M/s Pankaj Gas Cylinders Ltd. is directed against Order-in-Appeal No. 100-CE/GZB/2006 dated 20/07/2006 passed by Commissioner of Customs & Central Excise (Appeals), Ghaziabad.

2. The brief facts of the case are that the appellants were engaged in the manufacture of LPG Cylinders and supplied the said Cylinders to various Oil Companies. The prices at which the goods would be purchased by Oil Companies were not known in advance to the appellant. Therefore, for the

Financial Years from 1993-94, 1996-97 & 1997-98, assessments were initially provisional and subsequently they were finalized. For the Financial Years 1998-99 to 2000-01, the appellant approached the Jurisdictional Officer with all the required information for finalization of assessments. However, the Assistant Commissioner, Central Excise, Division-III, Ghaziabad passed Order-in-Original No. 201/2005 dated 13/12/2005 wherein he has stated that the appellant had not made request for resorting to provisional assessment as required under Rule 9B of Central Excise Rules, 1994, and therefore, appellants requested to treat assessments for the Financial Years 1998-99 to 2000-01 as provisional is rejected. Being aggrieved, the appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 100-CE/GZB/2006 dated 20/07/2006, wherein he has held that since the provision of said Rule 9B of Central Excise Rules, 1994 were not followed by the appellants, the assessments could not be treated as provisional.

3. Heard the ld. Counsel for the appellants who has submitted that all the information required for finalization of assessments for the Financial Years 1998-99 to 2000-01 were already submitted with the Jurisdictional Officers before the date on which impugned Order-in-Original No. 201/2005 dated 13/12/2005 was passed. He has further relied on this

Tribunal's Larger Bench decision in the case of Rajeev Mardia *Versus* Commissioner of Central Excise, Indore reported at 2001 (129) E.L.T. 334 (Tribunal - LB).

4. Heard the ld. D. R. who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of the facts of both impugned Order-in-Appeal & Order-in-Original, we find that the Original Authority did not properly understand the provisions of said Rule 9B of Central Excise Rules, 1994. The said Rule 9B of Central Excise Rules, 1994 provides for provisional assessments for want of information such as value for assessment. The provision is made under the said Rule 9B of Central Excise Rules, 1994 for provisional assessments only when at a particular point of time the value to be determined for arriving at Central Excise duty payable when the rate of duty is *ad-valorem* is not known. The date on which the Assistant Commissioner, Central Excise, Division-III, Ghaziabad passed Order-in-Original dated 13/12/2005, the Jurisdictional Central Excise Officer was having entire information in respect of the value of the goods to arrive at duty payable for the Financial Years 1998-99 to 2000-01. Therefore, there was no need on 13/12/2005 to examine the said issue for invocation of provisions of said Rule 9B of Central Excise Rules, 1994. The Assistant Commissioner should have finalized assessments on the basis of information available with him. We, therefore,

find that both the impugned Order-in-Appeal & Order-in-Original are bad in law. We set aside the impugned order and direct the Original Authority to finalize the assessments for the Financial Years 1998-99 to 2000-01 within a period of 90 days from the date of receipt of copy of this order. It is needless to mention that on finalization of assessments if it is found that the duty paid was in excess of amount payable on finalization then the issue of refund of excess duty collected may also be examined. We also direct the appellant to submit a copy of this order immediately on receipt of the same to the Office of the Assistant Commissioner, Central Excise, Division-III, Ghaziabad. The appellants shall be entitled for all the reliefs, 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
23/05/2017
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