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: 06/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70146-70150/2017-EX[DB] dated 12/01/2017

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/3504/2006	**Lansys Computers P Ltd** C-2,golden Apartment462 , Mumfordganj ALLAHABAD UP
2	E/3505/2006	**Ramesh Priyadarshi** 418- New Mumfordganj ALLAHABAD UP
3	E/3506/2006	**Chandra Prabha Yadav** 58-53, Old Mumfordganj ALLAHABAD up
4	E/3507/2006	**Ravindra Mathur** C-2 Golden Apartment, 462 Mumfordganj ALLAHABAD UP
5	E/3508/2006	**Anu Goel** Mig-3,new Ada Colony, Mumfordganj ALLAHABAD UP

Name and Address of
Respondent

6 C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL
LINES,
ALLAHABAD,
UTTAR PRADESH-211001

7 C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL
LINES,
ALLAHABAD,
UTTAR PRADESH-211001

8 C.C. & C.E. & S.T.-Allahabad
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ALLAHABAD,
UTTAR PRADESH-211001

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LINES,
ALLAHABAD,
UTTAR PRADESH-211001

10 C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL
LINES,
ALLAHABAD,
UTTAR PRADESH-211001

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

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ADVOCATES(ALLD)
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ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
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12 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

22 C.D.R. 23 Office Copy 24 Guard File

Asstt. Registrar

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

Appeal Nos. : E/3504, 3505, 3506, 3507 & 3508/2006-EX[DB]

Arising out of Order-in-Appeal Nos. 73-77CE/ALLD/2006 dated 06.07.2006 passed by Commissioner (Appeals), Customs & Central Excise, Allahabad.

I. Lansys Computers P. Ltd. (E/3504/2006)
II. Ramesh Priyadarshi (E/3505/2006)
III. Chandra Prabha Yadav (E/3506/2006)
IV. Ravindra Mathur (E/3507/2006)
V. Anu Goel (E/3508/2006)

....APPELLANTS

VERSUS

I. C.C. & C.E. & S.T.- Allahabad
II. C.C. & C.E. & S.T.- Allahabad
III. C.C. & C.E. & S.T.- Allahabad
IV. C.C. & C.E. & S.T.- Allahabad
V. C.C. & C.E. & S.T.- Allahabad

....RESPONDENTS

APPEARANCE

Ms. Stuti Saggi, Advocate for the appellants.
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 12. 01. 2017

FINAL ORDER NO. 70146 - 701[illegible] /2017

Per Mr. Anil G. Shakkarwar :

The referred appeals are arising out a common Order-in-Appeal No. 73-77CE/ALLD/2006 dated 06.07.2006 passed by Commissioner (Appeals), Allahabad.

2. The brief facts of the case are that the business premises of M/s. Lansys Computers P. Ltd was visited by officers of Central Excise on 15.07.1994. On the basis of investigation it appeared to Revenue that M/s. Lansys Computers was assembling computers and selling the same. It also appeared to Revenue that assembly of computers amounts to manufacture. Therefore, the appellants were issued with a common show cause notice dated 22.11.1994 wherein M/s. Lansys Computers was called upon to show cause as to why Central Excise Duty amounting to Rs. 8,34,447/- on 58 number of computer sets removed clandestinely without payment of duty should not be recovered under Rule 9(2) of Central Excise Rule, 1944. Other appellants were called upon to show cause as to why penalty should not be imposed upon them. The appellants filed defence replies before the Original Authority giving details of the activity undertaken by them. They have shown to the Original Authority that they were in the business of networking of computer by way of installing LAN facility and connecting different computers together. They have also submitted before the Original Authority that the amount of excise duty demanded from them from such sum which included the sales value of computer related goods sold to the clients and also charges recovered for installation of LAN i.e. connecting different computers in networking. The said show cause notice was adjudicated through Order-in-Original No. 88/94/1210 dated 16.04.2001. The Original Authority on page 62 of the Order-in-Original held as follows :-

> *"On summing-up of the cases of sale of computer system/computer sets sold and value thereof as ascertained in the discussion and findings above, I find*

> *that the party had cleared computer system comprising of 38 computer sets, total valued at Rs. 17,12,890/- without payment of Central Excise duty amounting to Rs. 2,56,933/- which is liable to be recovered from them u/ Rule 9(2) of the C.Ex. Rule, 1944 readwith Sec. 11A(2) of the C.Ex. Act, 1944 and the party are also liable for penal action under Rule 173Q of the Central Excise Rules, 1944."*

The Original Authority further held that the appellants were assembling the Central Processing Unit (C.P.U.). The other noticees were imposed with penalty of Rs. 25,000/- each. Aggrieved by the said order, the appellants preferred appeal before Commissioner (Appeals). The said appeal was decided through Order-in-Appeal Nos. 73-77CE/ALLD/2006 dated 06.07.2006. The learned Commissioner (Appeals) has considered the assessable value of Rs. 17,12,819/- considered by the Original Authority as cum duty value and recalculated assessable value to Rs. 14,89,470/- and reduced the demand confirmed from Rs. 2,56,933.50 to 2,23,420.50/- and did not interfere with remaining part of the said Order-in-Original. Aggrieved by the said Order, appellants are before this Tribunal.

3. Heard the learned counsel for the appellants. She has submitted that the appellants were engaged in repair/maintenance of computers. They are also engaged in networking of computers and therefore the allegations of manufacture of computers was not sustainable.

4. Heard the learned D.R. who has supported the impugned Order-in-appeal.

5. Having considered the rival contentions and on perusal of records, we find that the Original Authority has in the above stated part of the impugned Order-in-Original has stated "On summing-up of

the cases of sale of computer system/computer sets sold". Therefore, it is very clearly established that there was no computer manufacturing going on at the business premises of appellants. Therefore, Order-in-Original and Order-in-Appeal are not sustainable. We, therefore, set aside the Order-in-Original and Order-in-Appeal and allow all the appeals.

(Pronounced and dictated in the open Court)

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

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

Patel/-

प्रमाणित प्रति / Certified True Copy
9.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001