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: 30/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70812/2017-EX[DB] dated 02/08/2017

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/495/2010	BERRY'S AUTO ANCILLARIES P LTD. B-16, S.I.L. Ancillary Estate, Amausi, Lucknow (UP)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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Copy To

3 Advocate(s) / Consultant(s):

Kartikeya Narain(Amicus Curiae) Advocate,
21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.

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/495/2010-EX[DB]

(Arising out of Order-in-Appeal No. 178-CE/LKO/09 dated 30/10/2009 passed by Commissioner (Appeals) Central Excise & Customs, Lucknow)

M/s. BERRY'S AUTO ANCILLARIES (P) LTD. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Kartikeya Narain (Amicus Curiae) Adv. for Appellant
Shri Rajeev Ranjan (Joint Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 02/08/2017
Date of Decision : 02/08/2017

FINAL ORDER NO.- 70812/2017........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 178-CE/LKO/2009 dated 30/10/09 passed by Commissioner Central Excise (Appeals) Lucknow.

2. Brief facts of the case that the appellants were engaged in the manufacture of parts of motor vehicle and the part manufactured were supplied to M/s Tata Motors Ltd. M/s Tata Motors Ltd., Lucknow used to supply drawing and design to the appellants. It appeared to Revenue that the cost of drawing and design should be included in the assessable

value. On investigation M/s Tata Motors Ltd., Lucknow through letter dated 02/11/2007 informed that the cost of drawing was nil because they provided dimension and specification such as length, weight etc. as offer drawing for the part to enable the appellant to develop thereon drawing in line with specification provided by them. Revenue presumed that the cost of drawing and design was @ 0.085% of the cost of goods manufactured and loaded assessable value to that extent and issued show cause notice dated 27/03/2008 through which a demand of Central Excise duty of Rs. 13,047/- was raised. The said demand was adjudicated through Order-in-Original No. 15/2009 dated 24/03/2009 wherein original authority confirmed the demand. The appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal dated 30/10/2009. The Learned Commissioner (Appeals) rejected the appeal filed by appellant. Aggrieved by the said order appellant is before this Tribunal.

3. Heard Mr. Kartikey Narain (amicus curiae) for appellant who has submitted that the said show cause notice was issued with the presumption that the cost of drawing and design was @ 0.085% of the cost of goods manufactured and therefore, the show cause notice is not sustainable.

4. The Learned AR has support the impugned Order-in-Appeal.

5. Having consider the rival contention and on perusal of record we find that M/s Tata Motors Ltd., Lucknow through their letter dated 02/11/2007 informed that the cost of drawing was nil. We also find that there is no material on record to establish that the cost of drawing was @ 0.085% of the cost of manufacture. Therefore, we hold that the demand is presumptive in nature and therefore not sustainable. We therefore, set aside the impugned Order-in-Appeal and allow the appeal. The appellant shall be entitled to consequential relief as per law. We appreciate the assistant provided by Mr. Kartikey Narain as amicus curiae.

(Dictated & Pronounced in Court)

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

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

LKS

प्रमाणित प्रति/Certified True Copy
05/09/17
Asstt. Registrar
(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001