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: 17/10/2017

To

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

Final Order No. A/71254/2017-SM[BR] dated 20/07/2017

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/ROA/50763/2016	E/3835/2005	**Rama Vision Limited** 2-km Kichha Rudrapur Road,khasra No.-276,village-kishanpur,tehsil-kichha UDHAM SINGH NAGAR UTTRANCHAL
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT -UTTAR PRADESH

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

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/3835/2005-EX[SM] With
ROA Application No. E/ROA/50763/2016

(Arising out of Order-in-Appeal No. 247-CE/MRT-II/2005 dated 28/10/2005 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s Rama Vision Limited **Appellant**

Vs.

C.C.E. & S.T. - Meerut - II **Respondent**

Appearance:

Shri Vineet Kumar Singh, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 20/07/2017

FINAL ORDER NO. 71254/2017

Per: Anil Choudhary

The issue in this appeal filed by the appellants is whether the Show Cause Notice dated 03/11/2001 and the subsequent proceedings are in the teeth of the ruling of Hon'ble Supreme Court in the case of Mafatlal Industries Limited *Versus* Union of India reported at 1997 (89) E.L.T. 247, and whether the provisions of unjust enrichment introduced in the scheme of provisional assessment with effect from 25th June, 1999 by Notification No. 45/1999-CE have retrospective effect.

2. The present appeal was earlier dismissed for default vide Final Order dated 17/09/2013 bearing Order No.

57668/2013, wherein this Tribunal have observed that the notice issued to the appellant have been returned un-delivered by the Postal Authorities. There is no intimation regarding change of address, if any. Thus, due to none appearance, the appeal is dismissed for non-prosecution. The ld. Counsel for the appellant have drawn my attention to an application addressed to the Assistant Registrar in the said appeal, dispatched on 04/08/2009, stating therein that the appellant submits that their address has been changed and the new address for communication is – Rama House, 23 Najafgarh Road Industrial Area, Shivaji Marg, New Delhi - 110015. Heard Ld. D. R. for Revenue on the issue of restoration.

3. Having considered the rival contentions, I find that the appellant have taken adequate measures in informing the Registry of the Tribunal, as regards change of their address. That they are not at fault for non service of the notice issued at the wrong/old address, as per the appeal memo. Accordingly, I restore the appeal to its Original Number in the interest of Justice. As the issue, herein, lies in a narrow compass, with the consent of the parties. I take up the appeal for final disposal.

4. The admitted facts are that the appellant was under provisional assessment scheme. As the appellant was engaged in the manufacture of Black & White Picture Tubes (Cathode Ray Tubes) of various sizes, sell their goods both from the

factory gate as well as from their depot, located at Noida U. P. on *f.o.r.* destination prices inclusive of duty. The Appellants had submitted declaration as to the depot selling prices, stated to be provisional and they were subject to final adjustment as to discount to be given to the dealers by way of credit notes on periodic basis. For the period 1st April , 1997 to 30th September, 1997, the provisional, assessments were finalized vide Assessment Memorandum No. 01/2000 dated 19/07/2000 determining surplus duty paid at Rs.11,50,415/-. Thereafter the appellant filed application for refund which was subject to scrutiny. It is noticed in the OIO dated 06/11/2000 that the appellant filed the refund claim papers alongwith Calculation Chart and the Chartered Accountant's Certificate. Thereafter, the report of Range Superintendent was called for, who vide his report dated 13/10/2000 intimated that the said refund claims have been found in order and are according to the amount finalized as per final assessment of provisional assessment. He also reported that the claim is not hit by time bar Clause and is being claimed for the first time, and no amount has been adjusted in the past. The claims are on account of surplus duty paid on discounts/deductions, which have been taken actually in lesser amount than that of actually admissible to them. They also found the genuineness of credit notes which have been verified from Ledger accounts in sundry debtors ledger. He recommended the claim for sanctioning, to the appellant.

5. Thereafter the Deputy Commissioner after going through the refund claim papers and the report of the Range Officers, Chartered Accountant's Certificate, etc. found the same in order and further observed that the appellant has cleared the finished goods from their Noida Depot during the subject period on payment of appropriate Central Excise duty but adhered to provisional assessment since they were not knowing the exact amount of value on account of different discounts/deductions. These discounts/deductions were admissible to the appellant. The appellant's claims amounts have been further checked and found that the total amount for the various periods comes to Rs.11,50,415/- as have been finalized vide final assessment memo. The appellant have cleared the goods to the indigenous customers. The claims have been filed within the stipulated period from the date of finalization of the assessment. They have borne the burden of surplus duty on their own and have not shifted the same on to customers as is evident from the credit notes as verified by the Range Officer. Accordingly, the refund claim was allowed and disbursed for an amount of Rs.11,50,415/-.

6. Thereafter, Show Cause Notice dated 03/11/2001 was issued by successor Deputy Commissioner, as it appears, alleging therein that the predecessor officer have not examined the issue of unjust enrichment properly as required under the provisions of Section 11B read with Section 12B of

the Act. The Show Cause Notice further seeks to reopen the finalization of the provisional assessment dated 19/07/2000 as he states – in addition to the grounds. It further appears that the refund claim was also not sanctionable to them, either wholly or in part questioning the various deductions claimed and allowed at the time of finalization of the assessment. Further, the Show Cause Notice states that why the amount should not be recovered from them under Section 11A(1) of the Act.

7. Heard the submissions of both the parties.

8. I find that under the facts and circumstances, the Show Cause Notice and the subsequent orders impugned herein are *void-ab-initio* and in the teeth of the ruling of Hon'ble Supreme Court in the case of Mafatlal Industries Limited *Versus* Union of India (supra), wherein the Apex Court held as follows:-

> "Rule 9B provides for provisional assessment in situations specified in Clauses (a), (b) & (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that 'when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls

short or in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be'. Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be."

I also find that so far as the issue of unjust enrichment is concerned, the same have been introduced in the provisional assessment scheme with effect from 25th June, 1999 and the same is not retrospective. I also find that the Show Cause Notice is wholly without jurisdiction and is an abuse of the process of the law. I, further find that there is no appeal filed by the Revenue against finalization of the assessment order dated 19/07/2000. Further, there has been no appeal filed by the Revenue against the order granting refund dated 06/11/2000. In this view of the matter, the Show Cause Notice is *void-ab-initio*. Accordingly, the impugned orders are set aside. The appellant shall be entitled for consequential benefits, if any, in accordance with law, including refund of the pre-deposit made during pendency of the appeal, which shall be granted to them with interest, as per rules

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy

25/10/17

Ansari

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