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: 23/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70252-70253/2018-EX[DB]** dated **16/01/2018**

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/1576/2009	**ACCURATE METERS LTD** A-2, SECTOR 10 NOIDA
2	E/1630/2009	C C E, NOIDA C-56/42, Sector-62, Noida-201307
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		ACCURATE METERS LTD. A-2, SECTOR 10, NOIDA, DISTT. G.B. NAGAR (UP),,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD
UTTARPRADESH
201002

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy   19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/1576 & 1630/2009-EX[DB]

(Arising out of Order-in-Appeal No. 71-CE/NOIDA/09 dated 20/02/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

(In Appeal No.E/1576/2009)

M/s Accurate Meters Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Noida	**Respondent**

&

(In Appeal No.E/1630/2009)

Commissioner of Central Excise, Noida	**Appellant**
Vs.	
M/s Accurate Meters Ltd.	**Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate	for Assessee
Shri Mohammad Altaf, Assistant Commissioner (AR).	for Revenue

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	16/01/2018
Date of Decision	:	16/01/2018

FINAL ORDER NOs. 70252-70253/2018

Per: Ashok Jindal

Both sides are in appeal against the impugned order.

2. The brief facts of the case are that the assessee is manufacturing 'Electricity Supply Meters' and its parts and

supplying the same to M/s Modern Industries Pvt. Ltd., (MIPL) who further supplying the goods to M/s Uttaranchal Power Corporation Ltd. On 01.01.2005, officers of Preventive Department visited the factory premises of the assessee which was found locked. Thereafter, the officers visited to the premises of MIPL wherein one Mr. Manoj Sharma was present, who stated that they were not having facility to manufacture of Electricity Meters and on the basis of the statement of Shri Manoj Sharma, it was alleged against the assessee that they were supplying complete Electric Meters to M/s MIPL. Therefore, assessee is required to pay duty on value of Complete Electricity Meters instead of meter parts, at which M/s MIPL sold the goods to Electricity Board. The matter was adjudicated by original adjudicating authority and the demand of duty was confirmed along with interest and penalty was also imposed. The said order was contested before the learned Commissioner (Appeals) who dropped the demand against the appellant-assessee, confirmed the penalty to Rs.15,000/- under Rule 25 of the Central Excise Rules, 2002. Against the said order, both sides are in appeal before us.

3. Heard the parties and considered the submissions.

4. After considering the submissions and the facts on record, we find that the whole case is based on the statement of Shri Manoj Sharma. There is no other evidence on record

that the assessee was manufacturing complete meters instead of meter parts. In the absence of any corroborative evidence against the assessee that they have cleared Electricity Meters in complete form from their factory, duty on the value of the complete meter cannot be demanded from the appellant-assessee. We have gone through the adjudication order, in the adjudication order, no findings has been given by the adjudicating authority why the duty is to be demanded from the assessee. Merely saying that on the basis of evidences collected in the show cause notice duty is payable, duty cannot be demanded unless and until the evidence placed on record were examined. Further, the learned Commissioner (Appeals) in her order has examined the issue in detail and after appreciating the evidence placed on record, held that duty is not payable by the assessee. Moreover, during the course of argument before us, no evidence has been placed by the revenue to support the allegation that assessee was engaged in manufacturing of complete Electricity Meters instead of meter parts. In the absence of any corroborative evidence, demand cannot be confirmed against the assessee. Therefore, in these circumstances, we do appreciate the impugned order dropping the demand of duty against the assessee.

5. We further find that the learned Commissioner (Appeals) have imposed penalty under Rule 25 of Central

Excise Rules, 2002 against the assessee. Considering the facts that provisions of Section 11AC of the Act have not attracted, therefore, no penalty under Rule 25 of Central Excise Rules, 2002 is imposable on the assessee.

6. In view of the above analysis, we hold that the assessee is not liable to pay duty at all on the value of Electric meters cleared to M/s MIPL and no penalty is imposable on the assessee.

7. In result, the appeal filed by revenue is dismissed and the appeal filed by assessee is allowed.

(Dictated in Court)

Sd/-

Anil G. SHAKKARWAR

(MEMBER TECHNICAL)

Sd/-

ASHOK JINDAL

(MEMBER JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
26/02/18
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