

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

**APPEAL No.E/60728/2013-EX[DB]**

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-156-13-14 dated 09/10/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

**M/s Albert David Ltd.,**

**Appellant**

**Vs.**

**Commissioner of Central Excise, Ghaziabad**

**Respondent**

**Appearance:**

Shri D. Chitlangia, Representative

for Appellant

Shri Rajeev Ranjan, Additional Commissioner (AR)

for Respondent

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

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

Date of Hearing : 24/07/2018  
Date of Decision : 24/07/2018

FINAL ORDER NO-**71635 / 2018**

**Per: Anil G. Shakkarwar**

Heard the parties and considered the submissions.

2. On perusal of record and considering the submissions made by both sides, we find that the impugned order has upheld the Order-in-Original through which Central Excise duty demand of Rs.1,63,276/- was confirmed against the appellant and equal penalty was imposed. It was contended before us that duty was demanded on scrap and waste items cleared and sold by the appellant. It was also submitted that some of the scrap items arose out of such goods on which

Cenvat credit was not availed. We have also perused the show cause notice. The show cause notice does not clearly indicate the items on which Central Excise duty was demanded, whether scrap was generated out of mechanical working and whether scrap was generated out of such goods on which Cenvat credit was availed. The burden was on revenue to establish that such scrap was excisable and that such scrap was generated out of such inputs on which Cenvat credit was availed. We find that the show cause notice is silent on the same. We, therefore, hold that the impugned order is not sustainable.

3. In result, appeal is allowed. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court)

**(Ashok Jindal)**  
**Member (Judicial)**

**(Anil G. Shakkarwar)**  
**Member (Technical)**

*akp*