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: 10/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70635/2016-EX[DB] dated 04/08/2016

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/MISC/70380/2016	E/1034/2011	**BHUSHAN STEEL LTD.,** 23, SITE-IV, SAHIBABAD, INDUSTRIAL AREA, SAHIBABAD (U.P.)
		Name and Address of Respondent
2		C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Allahabad

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

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

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 Guard File

Asstt. Registrar

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

MISC Application No.: E/MISC/70380/2016 &
Appeal No.: E/1034/2011-EX[DB]

Arising out of O/O No. 37/Commr./GZB//2010-11 dated 28.01.2011 passed by Commr. of Customs & Central Excise, Ghaziabad.

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s. Bhushan Steel Ltd.

...APPELLANT(S)

Vs.

Commissioner of Central Excise
Ghaziabad.

...RESPONDENT(S)

APPEARANCE

Shri Rajesh Chibber (Advocate), for the Appellant(s)
Shri Rajeeve 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 : 04.08.2016

FINAL ORDER NO. (70635/2016)

Per Mr. Anil G. Shakkarwar:

The appellant has filed the present Miscellaneous Application No. E/MISC/70380/2016, praying for early hearing of Appeal No. E/1034/2011-EX[DB], on the grounds that the Original Authority had confirmed the demand of duty on Zinc Dross and Zinc Ash through impugned order, in above stated appeal and that C.B.E.C. have issued a Circular No. 1027/15/2016-CX dated 25-04-2016, wherein in para 4.2 it is clarified that Dross and such by product or waste of non-ferrous metals are non-excisable goods and the appellant has requested for early hearing of appeal. The ld. Counsel for the appellant took us through the said Circular and it appeared to us that along with the disposal of Miscellaneous Application, Appeal could be taken for final decision. The ld. A.R. for Revenue has also conceded for disposal of main appeal. Hence, we take up both Miscellaneous Application and Appeal together for disposal.

2. The appellant was issued with a Show Cause Notice, dated 05-06-2009 by Additional Director General, DGCEI New Delhi, alleging that Zinc Dross and Zinc Ash arising during the manufacture of G.P. Coils & G.P. Sheets were chargeable to Central Excise duty in view of explanation Annexed to Section 2(d) of Central Excise Act, 1944 with effect from 10-05-2008 and demanded Central Excise duty amounting to Rs.94,04,538/- on Zinc Dross and Zinc Ash for the period from May, 2008 to February, 2009 under Section 11A of Central Excise Act, 1944. There was proposal for recovery of interest and imposition of penalty. The said Show Cause Notice was adjudicated through Order-in-Original

No.37/Commr./GZB/2010-11 dated 28-01-2011, through which demand was confirmed and penalty imposed. Through the said impugned Order-in-Original Central Excise duty amounting to Rs.86,61,932/- as and Rs.2,59,858/- as Education Cess & Higher Ed. Cess already deposited by the appellant was appropriated.

3. Aggrieved by the said Order-in-Original dated 28-01-2011, appellant is before us.

4. The ld. Counsel for the appellant has taken us through the said Circular issued by C.B.E.C. dated 25th April, 2016, which is as follows:-

> "Excisability of bagasse and similar other by-products or wastes arising during the course of manufacture of an excisable product has been an issue under dispute. Following circulars/instruction have been issued from time to time on the subject:-
> (a) Circular No. 904/24/2009-CX dated 28-10- 2009,
> (b) Circular No. 941/02/2011-CX dated 14-02-2011,
> © Instruction F. No. 17/02/2009-CX (Pt.) dated 12-11-2014.
> 2. The issue came before the Hon'ble Supreme Court in a case of *M/s Union of India and Ors Vs M/s DSCL Sugar Ltd.- 2015-TIOL-240-SC-CX* dated 15-07-2015. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The judgement applies to both periods, before and after the insertion of explanation in Section 2(d) of the Central Excise Act, 1944 by the Finance Act,2008. It may also be noted that Hon'ble high Court of Bombay in case of *M/s Hindalco Industries Ltd. Vs. Union of India [2015 (315) E.L.T. 10(Bombay)]* =2014-TIOL-2266-HC-MUM-CX came to similar conclusion in relation to dross and skimming of aluminium, zinc or other non-ferrous metal.
> 3. In the light of the above judgments, circulars of the Board on the subject viz. 904/24/2009-CX dated 28-10-2009, 941/02/2011-CX dated 14-02-2011 and instruction issued vide F. No. 17/02/2009-CX(Pt.) dated 12-11-2014 have become non-est and are hereby rescinded. Cases kept

in Call Book on the above issue may be taken out and adjudicated.

4.1 It may also be noted that rule 6 of the Cenvat Credit Rule (CCR), 2004 was amended with effect from 01-03-2015 by inserting explanation 1 and explanation 2 in sub-rule (1) of rule 6. These explanations continue in the present rule 6 also and are reproduced below for ease of reference:-

"Explanation 1. *–For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 <u>shall include non-excisable goods cleared for consideration from the factory.</u>*

"Explanation 2. *–Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder."*

4.2 Consequently, Bagasse, Dross and Skimmings of non-ferrous metals or any such byproduct or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004."

He has further argued that now the C.B.E.C. has clarified that Dross or any such by-product or waste of non-ferrous metals are non-excisable goods and therefore the Order-in-Original does not remain sustainable. The ld. Departmental Representative has contended that the said Circular is applicable to the facts of the case.

5. We have considered the contentions of both parties. It is very clear from the said Circular dated 25th April, 2016 issued by C.B.E.C. that Revenue has taken a view that Dross, ash or any such by-product or waste of non-ferrous metals are non-excisable goods. We, therefore, hold that the impugned Order-in-Original is liable to be set aside. We set aside the impugned Order-in-Original and allow the

appeal with consequential relief to the appellant. The Miscellaneous Application also stands disposed off.

(Dictated and pronounced in the open Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
30.8
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