CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 5/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70165/2016 SM dated 28/4/2016

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
	E/51931/2015	ORIENT BELL LTD 8, INDUSTRIAL AREA SIKANDRABAD BULANDSHAHAR, UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, NOIDA C-56/42, SECTOR-62 NOIDA

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH S.C.KAMRA,ADV
B-3/210(BASEMENT)
SAFDARJUNG ENCLAVE
NEW DELHI

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxindiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal Nos.51911/15

Arising out of OIA No.NOI/EXCUS/002/APP/321/2014-15 dated 14/01/2015 passed by the Commissioner (Appeals), Central Excise & Service Tax, Noida.

For approval and signature:

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

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 Orient Bell Ltd. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S.Tax, Noida RESPONDENT (S)

APPEARANCE

Shri S. C. Kamra, Adv. for the Appellant (s)
Shri S. J. Sahu, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 28.04.2016

Final ORDER NO. 70165/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant, M/s Orient Bell Ltd., is in appeal against Order-in-Appeal No.NOI/EXCUS/002/APP/321/2014-15 dated 14/01/2015 passed by the Commissioner (Appeals), Central Excise & Service Tax, Noida.

2. The issue in this appeal is whether the appellants who acquired the squaring and champering machine on 21/1/2004 for Rs.21,66,692/- and availed Cenvat credit of Rs.3,46,671/- disposed or sold of the machine after user on 3/3/2010 after using the same for 24 quarters at Rs.41,000/-, is liable to pay duty under the provisions of Rule 3(5) read with Rule 3(5A) of CCR on the transaction value or on the balance Cenvat credit as it reduced by the number of quarters used, that is, Rs.1,38,668/-. SCN dated 26/12/12 was issued pursuant to Audit as it appeared to audit/revenue that the appellant have removed capital goods during the period March 2010 to June 2011 and accordingly, on amount the capital assets was required to pay duty on the squaring in champering machine, under the provisions of Rule 3(5) being Rs.1,38,668/- instead of duty under Rule 3(5A) on the transaction value amounting to Rs.4,223/- . The appellant contested the SCN and the same was adjudicated vide OIO dated 15/7/14 levying duty on the champering machine under Rule 3(5) of Rs.1,38,668/- along with equal amount of penalty under Rule 15 (2) of CCR read with Section 11 AC of the Act.

3. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals), who vide the impugned order, was pleased to allow the appeal in part but confirmed the demand of duty on the champering machine observing that the appellant used the machinery for 24 quarters, which reduced its the value by 60%, at the rate of 2.5% per quarter.

4. Being aggrieved the appellant is in appeal before this Tribunal on the grounds that the appellant have disposed of the champering machine as scrap and as such Commissioner has erred in confirming the duty under the provisions of Rule 3 (5) of CCR. The appellants have used the machine for 6 years approximately before scrapping it due to wear and tear. Further, the appellant sold the machinery as condemned or scrap items through sale invoice dated 2/3/2010. As the appellants have treated the machinery as waste and scrap and also sold the same as waste and scrap, the duty is payable on the transaction value under the provisions of Rule 3(5A) of CCR and ld. Commissioner erred in disallowing the claim confirming the duty under Rule 3(5) of CCR. It is further argued that the machinery was disposed of on 2/3/10 and duty paid vide debit entry dated 5/3/13, Cenvat credit according to the transaction value, was reversed, as there was confusion, if Cenvat credit had been taken earlier. There is no contumacious conduct or concealment on the part of the appellant. Further the demand have been confirmed arbitrarily and there is no legal provisions for the same. Accordingly, he prays for allowing the appeal with consequential benefits.

5. The ld.A.R. for Revenue relies on the impugned order.

6. Having considered the rival contentions, I find that the ld. Commissioner have without any sanction of law arbitrarily held the champering machine at the time of the sale was not in scrap/waste condition. In absence of any ground-rules under the Statute, the Revenue has to accept the treatment of the machinery by the assessee. Even by Rule of thumb, I find that the sale value is Rs.41,000/- which is approximately 2% of the acquisition price of the machine. Thus, by Rule of thumb, it is definitely disposed off as waste and scrap. Accordingly, I allow the appeal. The impugned order is set aside to the extent its confirmed duty on the disposal of the champering machine along with penalty.

7. Thus, the appeal is allowed. The appellant is entitled to consequential benefits, if any, in accordance with law.

(Pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
27.5.16
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