FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
SINGLE MEMBER APPEAL BRANCH

Dated: 26/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70222/2016-SM[BR] dated 19/05/2016

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/Stay/53674/2014	E/53260/2014	CHAUDHARY STEELS VILL. & POST- ISMAILPUR, CHANDPUR, BIJNOR,UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-I EXCISE CHOWK,,UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

AALOK ARORA,ADV
82-MISSION COMPOUND,
SAHARANPUR-247001

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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,Panjagutta 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

Ex.Appeal No.53260/14

Arising out of OIA No.148-CE/MRT I/2013 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Meerut I.

For approval and signature:

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

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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 Chaudhary Steels ...APPELLANT(S)

VERSUS

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

APPEARANCE

Shri Alok Arora, Advocate for the Appellant (s)
Shri H. M. Dixit, Asstt. Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03.11.2015

Final ORDER NO. 70222/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपील अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL सत्यमेव जयते

Per Mr. Anil Choudhary :

The appellant is in appeal against the Order-in-Appeal No.148-CE/MRT I/2013 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Meerut I.

2.1 The brief facts are that the appellants are engaged in the manufacture of M.S.Ingot and Runner & Riser falling under Chapter 72 of CETA, 1985 and are registered with the Central Excise Department. The appellants are also availing the facility of Cenvat Credit under CCR, 2994. During the course of scrutiny of ER-1 Returns filed by the appellants, it was observed that the appellants started default in payment of Central Excise duty w.e.f. Dec.2010 and this default continued during the period from July, 2011 to Sept. 2011 clearances by utilizing Cenvat credit were, therefore, considered to have been made without payment of duty in terms of provisions of sub-rule (3A) of Rule 8 of the Central Excise Rules, 2002, being the amount of Cenvat credit utilized by the party during the period July, 2011 to Sept. 2011 in violation of Rule 8 (3A) of CER, 2002. Therefore, the same was considered to be recoverable from the appellants along with interest through account current under sub-rule 3A of Rule 8 of the CER, 2002 read with Section 11A & 11B of the Central Excise Act, 1944. The adjudicating authority vide the impugned order confirmed the demand of Central Excise duty amounting to Rs.4,58,444/- along with interest and imposed an equal amount of penalty on the appellants.

2.2 The adjudicating authority vide the impugned order dated 17.06.2013 observed and held that the appellants defaulted in payment of duty during the period from December, 2010 to June, 2011 beyond thirty days which resulted into short payment of duty in terms of Rule 8 (3A) of CER, 2002. Therefore, the appellants were required to pay duty on future clearances for each consignment at the time of removal, without utilizing the Cenvat credit till the date the appellants clear the outstanding amount including interest thereon.

2.3 The appellant, being aggrieved, had preferred appeal to the ld.Commissioner (Appeals), who was pleased to dismiss the appeal, upholding the order-in-original.

2.4 Being further aggrieved, the appellant assessee is in appeal before this Tribunal.

3. Heard the parties.

4. Having considered the rival contentions, I find that the provisions of Rule 8 (3A) of Central Excise Rules, 2002, have been held to be un-reasonable and ultravires under Article 14 and 19(1)(g) of the Constitution of India, by the Hon'ble Gujarat High Court in Indsur Global Ltd. Vs. Union of India, vide Order dated 27.11.2014, reported at 2014 (310) ELT 833. Thus, the very foundation of SCN and the impugned order does not survive. Thus, the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential benefits.

(Operative part ofthe Order was pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

mm

प्रमाणित प्रति / Certified True Copy
9.6.16
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