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

To

Dated: 14/1/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70013/2016 SM & MISC ORDER NO 70001-70002/2016 dated 06/1/2016

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/MISC/70001& 51886/2015	E/1286/2003	TIN MANUFACTURING CO(INDIA C.G.O COMPLEX-II KAMLA NEHUR NAGAR GHAZIABAD201302)

Name and Address of Respondent: CCE, GHAZIABAD C.G.O COMPEX-II KAMLA NEHRU NAGAR GHAZIABAD(UP))

Other Appellants and Respondents as per Annexure

Copy To

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

4 Bar Association, CESTAT, Delhi
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,Penjagutta 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

MAs.70001/16 & 51886/15
& Ex.Appeal No.1286/03

Arising out of OIA No.112-CE/GZB/03 dated 12/03/2003 passed by the Commissioner (Appeals), Central Excise & Customs, Ghaziabad.

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 Tin Manufacturing Co. (India)

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 06.01.2016

Final ORDER NO. 70013 /2016
Misc/ORDER No. 70001-70002/2016

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

Per Mr. Anil Choudhary :

The appellant have filed the present Misc.Application No.E/Misc/51886/15 seeking rectification of mistake in Misc.Order No.50336-50337/2015-EX-SM dated 21.01.2015 and also filed another Misc.Application No.70001/2016/SM for taking the documents on record being bill of enry which were not available earlier as the same was lying seized with Income Tax Department and subsequently, the appellant had received the certified copy.

2. The appellant had preferred Misc.Petition Number 62 of 2007 in the present appeal for rectification of final order dated 12/2/2004 in Appeal No.E/1286/03-NB (S) which was dismissed for non-prosecution vide order dated 19/2/2008. Thereafter, the appellant had preferred Misc.application No.59518/13/SM for restoration of the earlier ROM application and the same was dismissed vide the order dated 21/1/2015 being Misc. order Numbers-50336-50337/2015-EX-SM holding that the miscellaneous application preferred is beyond a period of 6 months from the date of receipt of the certified copy of order dated 19.02.2008. The appellant had carried the said matter before the Honourable Allahabad High Court in CEA number 180 of 2015 wherein the Honourable High Court have held that there is mistake of fact in the order and the Misc. petition had been filed within the period of 6 months from the date of receipt of the certified copy. Accordingly, remitted the matter back to the Tribunal to examine the issue afresh

and pass appropriate order on the rectification application after giving an opportunity of hearing to the parties.

3. Under the facts and circumstances the miscellaneous applications are taken up for hearing along with the application for additional documents. Heard the parties. It is seen that the additional document is a photocopy of the certified copy lying with the Income Tax Department being bills of entry on the basis of which the appellant had taken modvat/Cenvat credit. The Cenvat credit was denied to the appellant by the Asst Commissioner only on the ground that the appellant was not having the relevant document being triplicate copy of the bill of entry. The contention of the appellants before the lower authority that the said document was lying seized is established, Department had not considered and the modvat credit so availed was denied. In view of the certified copy now produced of the triplicate copy of the bill of entry it is evident that the appellant has taken Cenvat credit on the basis of proper documents in accordance with law. In this view of the matter miscellaneous application number 70001/2016 is allowed and the additional document being bills of entry are taken on record for consideration.

4. Under the facts and circumstances I find that that there is error of record in the final order number E/385/04/NB (S) dated 12/2/2004 by which the appeal of the appellant was dismissed for want of proper document being triplicate copy of the bills of entry. Thus, I recall the said order dated 12/2/04 and allow the appeal by way of remand to the adjudicating authority to consider the certified copy of triplicate of

bills of entry now available with the appellant, duly certified by the Income Tax Department, and pass a reasoned order in accordance with law, within a period of 3 months from the date of receipt of a copy of this order.

5. Thus, all the Misc.Applications are allowed and the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

mm

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)