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: 16/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70566/2017-CU[DB] dated 07/06/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/59191/2013	Commissioner of CUSTOMS(PREVENTIVE)-Lucknow HALL NO.3... 5TH FLOOR, KENDRIYA BHAWAN...SECTOR-H, ALIGANJ,LUCKNOW, UTTAR PRADESH
		Name and Address of Respondent
2		Agrawal Associates KUNSERWA BYPASS,NAUTANWA,, MAHARAJGANJ ,U.P

Copy To

3Advocate(s) / Consultant(s):

AMIT AWASTHI ADVOCATE
7/116A, H-1, 1ST FLOOR, RADHEY
APARTMENT, SWAROOP NAGAR, KANPUR-
208002

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

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.C/59191/2013-CU[DB]

(Arising out of Order-in-Appeal No. 01/Cus/Alld./2013 dated 13/05/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Customs (Prev.), Lucknow **Appellant**

Vs.

M/s Agarwal Associates **Respondent**

Appearance:
Shri Rajeev Ranjan, Joint Commissioner (AR), for Appellant
Shri Amit Awasthi, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 07/06/2017
FINAL ORDER NO...70566/2017.....

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue against Order-in-Appeal No. 01/Cus/Alld./2013 dated 13.05.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad.

2. The brief facts of the case are that the Respondent - M/s Agarwal Associates during the period from 03.05.2012 to 31.05.2012 filed 31 Shipping Bills at Land Customs Station, Barhni for the export of Iron Ore Fines to Nepal. Initially, the assessment for valuation of export goods was provisional and subsequently it was finalized through letter C No. VII (25) 24-Tech/08/Pt/191 dated 04.05.2012. On scrutiny of the documents submitted by the respondent at the time of export of Iron Ore Fines, it appeared to Assistant

Commissioner that since the respondent had procured export goods from M/s Gallant Ispat Ltd., Gorakhpur the freight charges of Railway @ Rs.1570/- per MT incurred by M/s Gallant Ispat Ltd., Gorakhpur for procurement of said export goods from mines in Jharkhand should be included in the assessable value of the export goods being exported by respondent - M/s Agarwal Associates. The issue was contested by the respondent stating that they have already included freight @ Rs.320/- per MT for transportation of export goods from Gorakhpur to Land Customs Station, Barhni and that they had purchased export goods from M/s Gallant Ispat Ltd., Gorakhpur on principal to principal ~~base~~ is and the cost of transportation from mines to Gorakhpur was already included in the price that was charged by M/s Gallant Ispat Ltd., Gorakhpur from the respondent (M/s Agarwal Associates). Not appreciating the said contentions, the Assistant Commissioner, Customs (Preventive), Division Gorakhapur loaded the assessable value of export goods @ Rs.1570/- per MT. Further, he directed the respondent to pay differential export duty within a period of 7 days of receipt of copy of the said order. The said order was passed through Order-in-Original No. 01/Assessment/LCS (B)/CUS-GKP/2013 dated 04.03.2013. Aggrieved by the said order respondent preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 01/Cus/Alld./2013 dated

13.05.2013 wherein the ld. Commissioner (Appeals) has held that M/s Gallant Ispat Ltd., Gorakhpur had purchased Iron Ore/ Iron Ore Fines as input and Iron Ore Fines were sold to respondent and that the report by C.A. indicated that freight charges @ Rs.1500/- per MT incurred to transport Iron Ore from Orissa to Gorakhpur was taken into account of M/s Gallant Ispat Ltd., Gorakhpur and shown in Balance Sheet while calculating profit or loss in the Profit & Loss Account. He, further, held that financial transaction of transportation Iron Ore/Iron Ore Fines from mines to Gorakhpur for procurement by M/s Gallant Ispat Ltd., Gorakhpur was complete at the end of M/s Gallant Ispat Ltd., Gorakhpur and that respondent was an independent buyer of Iron Ore Fines from M/s Gallant Ispat Ltd., Gorakhpur and the transaction between M/s Gallant Ispat Ltd., Gorakhpur and respondent – M/s Agarwal Associates is on principal to principal basis and that respondent have included transportation cost of Rs.320/- per MT for transportation of export goods from Gorakhpur to Land Customs Station, Barhni. He, further, held that the fright @ Rs.1570/- per MT would not form part of transaction value of the export goods by the respondent. He, therefore, set aside the said Order-in-Original dated 04.03.2013 and allowed appeal filed by respondent. Aggrieved by the said order Revenue is in appeal before this Tribunal.

3. Heard the ld. D. R., who has taken us through the grounds of appeal.

4. Heard the ld. Counsel, Shri Amit Awasthi, for the respondent who has brought to our notice that the ground No. 4 in the grounds of appeal which is the main grounds of appeal was one which is already adjudicated upon by ld. Commissioner (Appeals) and urged that therefore the appeal filed by Revenue is not sustainable.

5. Having gone through the rival contentions and on perusal of the facts on record we find that Revenue has presented four grounds in the said grounds of appeal and we find that the main grounds of appeal was at Serial No. (iv). We find that it was already adjudicated upon by ld. Commissioner (Appeals) through impugned Order-in-Appeal dated 13.05.2013 and Revenue has not brought forward any ground to contest the finding by ld. Commissioner (Appeals). We, therefore, do not find any merit in the appeal filed by Revenue. We, further, hold that there are no grounds to interfere with the value of export goods declared by the respondent while filing the said 31 Shipping Bills. We, therefore, dismiss the appeal filed by Revenue. The respondent shall be entitled for consequential relief, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति/Cerified True Copy
20/06/2017
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