CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70947/2016-SM[BR] dated 30/09/2016

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/55876/2014	BHARAT STEEL ROLLING MILLS MEERUT RPAD MUZAFFARNAGAR 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

3 Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No.E/55876/2014-EX[SM]

Arising out of Order-in-Appeal No.34-CE/MRT-I/2014 dated 25.04.2014 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

For approval and signature:

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 Bharat Steel Rolling Mills

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Meerut-I

...RESPONDENT (S)

APPEARANCE:

Shri Alok Arora, Advocate for the Appellant (s)
Shri D.K. Deb Assistant Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 30.09.2016

FINAL ORDER NO.- 70947/2016

Per Mr. Anil G. Shakkarwar:

The appeal is filed by the Appellant, M/s Bharat Rolling Mills, against Order-in-Appeal No.34-CE/MRT-I/2014 dated 25.04.2014 passed by the Ld. Commissioner (Appeals).

2. The brief facts of the case are that the assessee were issued with a show cause notice dated 08.10.2012. Revenue observed that the appellant have shown other income of Rs.10,54,200/- in profit and loss account for the financial year 2008-09. They further noticed that the said income was received from M/s Shri Ganesh Trading Co. Bhatinda and that M/s Ganesh Trading Company was a consignment agent of the appellant. It appeared to Revenue that the said amount is a part of the transaction value on which Central Excise duty was not paid. Therefore, relying on the appellant's letter dated 19.01.2011 and 05.07.2011 and Ledger account for the period 01.04.2008 to 31.03.2009, Revenue treated Rs.10,54,200/- in report of M/s Ganesh Trading Company, Bhatinda as additional consideration and demanded Central Excise duty of Rs.1,36,189/-. The matter was adjudicated to Order-in-Original dated 31.10.2013, wherein the demand was confirmed and equal penalty was imposed. The appellant preferred appeal before Ld. Commissioner (Appeals), who decided the appeal through Order-in-Appeal No.34-CE/MRT-I/2014 dated 25.04.2014, wherein Ld. Commissioner rejected the appeal. Aggrieved by the Order-in-Appeal dated 25.04.2014, appellant is before this Tribunal.

3. Heard both the parties.

4. I have examined the show cause notice. The show cause notice is relied on appellant's letter dated 19.01.2011. In the said letter, the appellant had informed Revenue that an amount of Rs.10,54,200/- has been written of by them as the same amount ~~has~~ could not recovered from the party. It was the responsibility of Revenue to examine this issue before issuance of show cause notice. If the amount is claimed to have not been received, then how it is treated as additional consideration for issue of show cause notice is unexplained. Therefore, I hold that the show cause notice was not issued with proper application of mind and the same is not sustainable. Therefore, I allow the appeal and set aside the Order-in-Original and Order-in-Appeal.

(Dictated and Pronounced in the open Court)

-Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Mishra

...Copy

25.10.16