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

Dated: 18/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70212/2016 SM dated 02/11/2015

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/58038/2013 SM	COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD)

Name and Address of Respondent — BHUSHAN STEEL LTD 28/4, SITE-IV INDUSTRIAL AREA SAHIBABAD, GHAZIABAD

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, 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

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Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal No.58038/13

Arising out of OIA No.17-CE/GZB/2013 dated 22/02/2013 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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Commissioner of C.Ex., Ghaziabad ..APPELLANT(S)

VERSUS

M/s Bhushan Steel Ltd. RESPONDENT (S)

APPEARANCE

Shri H. M. Dixit, Asstt. Commr. for the Revenue
Shri Rajesh Chibber, Adv. for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 02.11.2015

Final ORDER NO. 70212/2016

Per Mr. Anil Choudhary :

The revenue is in appeal against order in appeal dated 22/2/13, whereby demand of Rs.11,73,137/- being attributable to shortage of raw material, have been set aside, along with equal amount of penalty.

2. The respondent is a manufacturer of cold rolled coils, hot rolled sheets or cold rolled sheets. In the course of Cost Audit under Section 14A of the Act, the Cost Auditor pointed out that there is some discrepancy in the quantity of raw material i.e. H.R.Coils issued, as against actually used for production of sheets. A shortage of 102.33 MT for 2006-07, 136.03 MT for 2007-08 and 138.61 MT for 2008-09 was pointed out. It was explained by the assessee to the cost audit that the difference in quantity of the H.R.Coils was due to internal captive use for manufacture of the cranes and other machines. However, the Cost Auditor did not agree as the assessee does not maintain separate records for receipt and issue of H.R.Coils for the manufacture of such cranes. Based on this report, SCN dated 11/1/12 was issued as it appeared to revenue that the assessee is unable to explain the discrepancy in the stock, accordingly, they proposed to recover cenvat credit amounting to Rs.12,34,825/- along with interest and further, penalty was also proposed under Rule 15 of Cenvat Credit Rules. The appellant contested the show cause notice by filing reply on merits as well as on the ground of limitation. The respondent explained that they received Rs.14,97,898.953 MT of H.R.Coils

involving Cenvat credit of Rs.6,42,09,49,349/- out of which the Revenue have doubted the use of 376.97 MT of H.R.Coils which is only 0.02% of the total input. It was also claimed that they issue H.R.Coils for captive consumption, have been duly recorded in Form IV Register and further, it was pointed out from ER-1 returns that the assessee cleared EOT crane time to time, which is evident on the face of the record. The SCN was adjudicated vide order dated 30/10/12 confirming the demand in respect of Cenvat credit of Rs.11,73,137/- under Rule 14 read with section 11 A of the Central Excise Act, 1944, along with interest. A reduced demand was confirmed, then proposed, as the contention of the assessee that there is discrepancy in the figure for the period 2008-09 was found correct. Further, equal amount of penalty was imposed under Rule 15 read with Section 11 AC of the Act. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals).

3. Vide the impugned order dated 22/2/13, the ld. Commissioner (Appeals) was pleased to allow the appeal and set aside the order, recording the following findings –

> *"6.1 I find that the adjudicating authority has observed under para 32 of the impugned order that the disputed quantity of HR Coil was issued by the appellant during the disputed period but not actually used for production of finished goods. Thus, it is clear that the receipt and issue of disputed quantity of the HR Coil has not been disputed by the department. The only ground taken by the department for confirmation of the demand is that the appellant failed to provide any record on the basis of which*

it may be established that the said quantity has been consumed by them in the manufacture of finished goods. I do not find any merit in the ground of the department because the revenue also could not bring out any documentary evidences on record which suggest that the disputed quantity of the HR Coil had been used by the appellant otherwise (not used in the production of finished goods).

6.2 However, I find that the appellant has submitted that they received inputs i.e. HR Coils primarily for the manufacture of C R Coils but in certain cases they use H R Coils and other items for the manufacture of EOT Crane. The removal of such crane is duly reflected in the RG 1 and monthly Returns showing clearance of goods on payment of duty. For receipt and issue of H R Coils, they maintain record in Form IV register. Whenever the H R Coils are issued for the manufacture of EOT Crane, the same are shown as captive consumption in the Form IV register. After manufacture of the EOT Crane, it is accounted for in the RG1 Register from where the same is cleared on payment of duty. The details of removal of EOT crane is duly reflected in the Monthly Returns. I find merit in the submission of the appellant as the same has been duly supported by documentary evidences. The appellant has submitted photo copies of record maintained in this regard showing therein issue of raw material for captive use. Besides, they had also submitted the clarification vide their letter dated 01.12.2011, with reference to query raised by the jurisdictional Superintendent regarding the difference in quantity of raw material issued vis-a-vis quantity of CR/GP sheets based on the observation of the Cost Auditor. In their clarification, they had stated that the said difference is on account of quantity of HR Coils used in the manufacture of EOT Cranes. The total quantity of HR Coils *were used during the period from 2006-07 to 2008-09 for the manufacture of EOT Cranes is 361.235 MT. They had also submitted details of clearances of EOT Cranes, manufactured by them using the said HR Coils. In details, year, invoice No., date, value, duty and wt. are given. Year wise details of captive consumption of quantity had also been submitted by them. The appellant has also submitted some copies of ER 1 returns showing therein manufacture and clearance of EOT Cranes. All these facts have not been disputed by the department. Moreover, it is also an undisputed fact that without the use of HR Coils and other raw materials EOT Cranes cannot be manufactured. How, these Cranes were manufactured without use of HR Coils has also not been commented by the department. In view of these facts, I am inclined to hold that the appellant has submitted sufficient documentary evidences in support of their contention that the disputed quantity during the relevant period were used for the manufacture of EOT Cranes. Therefore, I also hold that the said quantity of HR Coils were used during the relevant period in the manufacture of finished goods i.e. EOT Cranes and accordingly, the cenvat credit amounting to Rs. 11,73,137/-is admissible to the appellant.*

7. I find that since the demand of Cenvat Credit availed by the appellant on the disputed quantity of HR Coils during the relevant period does not stand on merit as discussed supra, therefore, I do not find any reason for the imposition of any penalty under Rule 15 of the CCR, 2004."

4. Being aggrieved, the Revenue is in appeal on the ground that the ld. Commissioner (Appeals) have ignored the fact that the Cost Audit had observed that the assessee did not maintain any separate

record for the receipt and issue of H.R. coils as contended by them to have been to be used for the manufacture of EOT Crane/machines. The assessee only maintained the records with regard to receipt and issue of HR coils. It is further contended that the adjudicating authority have observed that on perusal of Form IV Register containing date-wise details of opening balance, quantity received, quantity issued for manufacture of excisable goods, quantity issued for job work, quantity issued for captive use and the closing balance, is pointed out. The Register also contains the date-wise quantity of work in progress. Work in progress shows the quantity of HR coils which is in the process of manufacture of finished goods but still the same does not reflect quantity of waste generated during the manufacturing process of the said finished goods. It is further pointed out that the assessee have failed to discharge the onus on them as to admissibility of Cenvat credit with regard to that the discrepancy found. It is further urged that the findings of ld. Commissioner (appeals) is based on only assumption and presumptions.

5. Heard the parties and perused the appeal records.

6. Having considered the rival contentions, I find that the ld. Commissioner (Appeals) examined the issue in detail as already noticed herein-above. I further find that the respondent assessee have given cogent explanation that the H.R.Coils issued for captive consumption, have been utilized in the manufacture of cranes/machines. Further, it is a matter of record and rightly appreciated in the impugned order that the assessee have cleared

cranes time to time on payment of duty. I find that these material fact have been ignored by the adjudicating authority, thereby, leading to irrational findings. I agree with the findings of ld.Commissioner (Appeals).

7. It is further held that in view of adequate disclosures made in stock records (Form IV Register), as well as regular clearance of EOT cranes, on payment of duty, and also reflected in the returns, there is no suppression or contumacious conduct on the part of the respondent assessee. Thus, I hold that extended period of limitation is also not available to Revenue.

8. Thus, the appeal is dismissed. The respondent-assessee will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

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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.)
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38, M. G. MARG, ALLAHABAD-211001