FAX : 0532-2400149

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

Dated: 19/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70998/2016-SM[BR] dated 31/08/2016

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/58177/2013	Rachna Metalindustries P Ltd 18/42,site-iv,indl.area,sahibabad GHAZIABAD U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3 Advocate(s) / Consultant(s): SH BIPIN GARG,ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI-70

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/58177/2013-EX[SM]

Arising out of Order-in-Appeal No. 21-CE/GZB/2013 dated 27.02.2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, 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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Rachna Metal Industries P. Ltd. ...APPELLANT

VERSUS

C.C.E. & S.T-Ghaziabad ...RESPONDENT

APPEARANCE

Shri Mayank Garg, Advocate for the Appellant
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30.08.2016

Final ORDER NO. – 70938/2016

Per Mr. Anil Choudhary :

The issue in this appeal by the appellant-assessee is, whether the finished goods found at the time of inspection unrecorded in their RG-1 register, which were seized and subsequently released. Whether the appellant have cleared the same on payment of duty.

2. Heard the parties.

3. In the earlier round of litigation by this appellant in Excise Appeal No. E/2047-2048/2009 vide a final order No. 423-424/2012-SM dated 16/04/2012, this Tribunal observed that there is no dispute by Revenue that duty element has been recovered for the excess goods. It was also observed that though there was escapement of recording of the finished goods, but the ingredients of Section 11AC were found to be absent. Accordingly, penalty under Rule 27 of CER, 2002 was found to be only attracted. Penalty so imposed under Rule 27 was reduced to Rs.5,000/-. It was observed that since the goods were found in the factory itself, on the date of inspection dated 19/9/2007, imposition of redemption fine was unwarranted. Accordingly, redemption fine as deleted by the First Appellate Authority, was upheld. Subsequent to this final order passed by this Tribunal when the appellant approached the adjudicating authority for refund of the amount of pre-deposit subject to adjustment of the penalty, which was retained by this Tribunal, show cause notice dated 16/08/2012 was issued alleging that this Tribunal has upheld the duty demand of Rs.4,77,663/-, therefore, the appellant is liable to pay dues

after giving appeal effect to the extent of Rs.4,77,663/- towards Central Excise duty and Rs.5,000/- amount of penalty retained under Rule 27 of CER. It was also alleged that appellant also have not entered in the daily stock account 6945.89 kg. of copper sheets etc., seized in the course of inspection and subsequently released vide order dated 14/01/2008. Accordingly, it appears that the said quantity of finished goods has been cleared without payment of duty.

4. In the course of argument the learned counsel for the appellant have produced the original RG-I register wherein the said quantity of 6945.89 kg. of copper sheet etc. have found to be entered on 14/01/2008. It is also clarified that in view of recording of fact by this Tribunal that duty element on the excess goods so found have been recovered. The operative part of the order is as under :-

> *"No doubt the investigation visited factory on 19.09.2007 and stock entry of that date was examined. To reduce the dispute; appellant agreed to make deposit of duty and did so."*

Accordingly, it is clarified that the amount of Rs.4,77,663/- is no longer recoverable. This appeal is allowed and the appellant will be entitled to refund of the pre-deposit with interest as per rules and the impugned order is set aside.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
26/10/16
सहायक रजिस्ट्रार / Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / C.E.S.T.A.T.
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001