FAX : 0532-2400349

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

Dated: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70847/2016-SM[BR] dated 31/03/2016

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/60717/2013	Commissioner of Customs, Central Excise and Service Tax-Allahabad 38...M G MARG... CIVIL LINES,ALLAHABAD, UTTAR PRADESH 211001
		Name and Address of Respondent
2		ABHINAV STEELS P LTD SATHARIYA,, JAUNPUR ,U.P

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 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

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

15 C D R ~~16~~ Office Copy ~~17~~ 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/60717/2013- [SM]

Arising out of O/A No. 09/CE/ALLD/2013 dated 24.06.2013 passed by Commr. (Appeals) of Central Excise, Customs & S. Tax, Allahabad.

For approval and signature:

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

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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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Commissioner of Central Excise & Service Tax,
Allahabad.

...APPELLANT(S)

VERSUS

Abhinav Steels Pvt. Ltd.

...RESPONDENT(S)

APPEARANCE

Shri Ashutosh Nath (Asstt. Commr.) A.R., for the Department
Shri Mayank Garg (Advocate), for the Respondent(s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 31. 03. 2016

FINAL ORDER NO. 70847/2016

Per Mr. Anil Choudhary :

The Revenue have preferred the present appeal against Order-in-Appeal No. 09/CE/ALLD/2013 dated 24-06-2013, whereby the demand of Rs.18,25,883/- was raised under Rule 3 (5A) of CCR, 2004 read with Section 11 A of the Act, along with interest and further equal amount of penalty was imposed under Section 11 AC of the Act, the same have been dropped by the ld. Commissioner (Appeals) in the impugned order.

2. The brief facts of the case are that the respondent-assessee, a manufacturer of M.S. Ingots, M.S. Bar, Channels, Flat, etc. are availing Cenvat credit facility under Rule 3 of CCR, 2004 on inputs/capital goods used in or in relation to manufacture of the final products. On scrutiny of schedule of fixed assets and the balance sheet of the appellant for the year 2007-08, during audit for the period April, 2009 to March, 2010, it revealed that plant and machinery of the rolling mills, which was closed since 1997-98 were sold for Rs.1,10,79,390/- as waste and scrap without payment of duty. Thus, it appeared that the respondent-assessee was liable for duty of Rs.18,25,883/-, calculated @ 16.48% on the transaction value under sub-rule 5A of Rule 3 of CCR, 2004, applicable with effect from 16-05-2005. The said Rule provides, if any capital goods are removed as waste and scrap, the manufacturer shall pay an amount equal to duty leviable on the transaction value. Accordingly, Show Cause Notice dated 29-02-2012 was issued for the

extended period 2007-08 and further penalty was proposed under Section 11 AC of the Act.

3. The appellant contested the SCN stating that the waste and scrap was sold by them during the Financial Year 2007-08, pursuant to dismantling of old plant which was purchased during the period 1989-92. At the relevant time the Modvat Scheme (on capital goods) was not in force. As they have not taken any Cenvat credit or Modvat credit at the time of purchase or acquisition of the plant and machinery, there is no question of payment of any duty, by reversal on its disposal. The SCN was confirmed vide Order-in-Original dated 07-08-2012 and further equal amount of penalty was imposed under Section 11 AC of the Act.

4. Being aggrieved, the appellant had filed appeal before Learned Commissioner (Appeals), who has been pleased to allow the appeal recording a finding that there is no indication either in the question or in the answer given by the Authorized Signatory of the appellant that the waste and scrap in question had been generated out of capital goods on which they had taken Modvat/Cenvat credit. The findings of the Adjudicating Authority are based on unsubstantiated presumptions and assumptions.

5. Being aggrieved the Revenue is in appeal on the ground that in view of the provisions of Rule 3 (5A) of CCR, 2004, applicable from 16-05-2005, if

any capital goods are removed as waste and scrap, the manufacturer is required to pay an amount equal to the duty leviable on transaction value. Whether, the Cenvat credit was taken at the time of purchase and/or acquisition is not material.

6. The ld. Counsel for the respondent, Shri Mayank Garg, Advocate, states that there is a condition precedent both in Rule 3 (5A) and in Rule 3 (5) of CCR, that Cenvat Credit is required to be reversed on disposal of capital assets only where Cenvat credit/Modvat credit was taken at the time of acquisition or purchase of the asset. Under the admitted fact that no Modvat/Cenvat credit was taken when the plant and machinery was acquired during the period 1989-92, when no Modvat Scheme had been issued by the Legislature or the Board, the Ld. Commissioner (Appeals) have rightly set aside the demand and penalty.

7. Having considered the rival contentions, I find that no case have been made by the Revenue that the appellant has taken Modvat/Cenvat credit at the time of acquisition of the plant and machinery which was disposed of as scrap during 2007-08. I, further, take notice of the provisions of Rule 3(5) as amended which provide for 2.5% depreciation per quarter during which plant and machinery on which Cenvat credit is taken was held, for the purpose of calculation of duty payable at the time of disposal. Admittedly, the plant and machinery in question has been held for more

than 10 years and as such under Rule 3(5) are entitled to 100% depreciation of the credit taken, if any. I also find that no case of suppression or contumacious conduct is made out against the respondent-assessee. As such the show cause is bad, invoking the extended period of limitation. Accordingly, I dismiss the appeal of Revenue, the respondent-assessee will be entitled to consequential benefit, if any, in accordance with law.

(Pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
25.10.16
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