FAX : 0532-2400149

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

Dated: 07/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71118-71119/2016-EX[DB] dated 30/11/2016

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/1890/2010	**BIHAR TUBES LTD.** A-19, INDUSTRIAL AREA, SIKANDRABAD, DISTT. BULANDSAHAR (U.P.)
2	E/2988/2010	**APL APOLLO TUBES LTD(FORMERLY KNOWN AS BIHAR TUBES LTD)** A-19, INDUSTRIAL AREA, SIKANDRABAD(UP)
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307 -
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307 -

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Cemax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/1890 & 2988/2010-EX[DB]

(Arising out of Order-in-Appeal No. 196/CE/APPL/NOIDA/2010 dated 15/07/2010 & 98/CE/APPL/NOIDA/2010 dated 22/03/2010 both passed by Commissioner (Appeals) Central Excise & Customs, Noida)

M/s Bihar Tubes Ltd.
M/s APL Apollo Tubes Ltd. (Known as Bihar Tubes Ltd.) **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR) for Respondent

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 30/11/2016
Date of Decision : 30/11/2016

Final ORDER NO.: 71118-71119/2016

Per: Dr. Satish Chandra

Both the appeals have been filed by the appellants against the impugned Order-in-Appeal No. 196/CE/APPL/NOIDA/2010 dated 15/07/2010 & 98/CE/APPL/NOIDA/2010 dated 22/03/2010.The period involved in the first appeal is October-2007 to July-2008 and in second appeal the period is July, 2008 to March, 2009. In both the appeals facts and circumstances are identical where duty was levied on the Zinc Ash, Dross (None ferrous Metal) which was upheld by the Commissioner (Appeals). Being aggrieved, the appellant has filed the present appeal before this Tribunal.

2. With this background, we heard Shri Rajesh Chhibber learned counsel for the appellant and Shri Rajeev Ranjan learned A.R. for the respondent.

3. After hearing both the parties and on perusal of record, it appears that Hon'ble Bombay High Court in the case of Hindalco Industries Ltd. Vrs. Union of India [2015 (315)ELT 10 (Bom.)] observed that in case of Dross and Skimmings of Aluminum Dross, and other none ferrous metal, duty is not payable. Similar observation was made by the Hon'ble Supreme Court in the case of M/s Union of India and others Vs M/s DSCL Sugar Ltd. [2015 TIOL-240-SC-CX] dated 15.07.2015. In view of the above, this Tribunal in the case of Bhushan Steels (in appeal No. E/1034/2011 and final order No.70635/2016 dated 04.08.2016) also observed similar views by explaining the Board Circular No. 1027/15/2016 dated 25th April, 2015 [illegible] ~~whose~~ Revenue has taken a view that dross and skimmings of none ferrous metal are none excisable goods. In other word, the Zinc dross and skimmings of none ferrous metal or any other such byproduct or waste are non excisable goods. When it is so, then there is no question to levy of excise duty. Thus, we set aside the impugned order.

4. In the result, we allow both the appeals, with consequential relief.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)

Member (Technical)

Sd/-
(Justice Dr. Satish Chandra)

President

akp