FAX : 0532-2400149 REGISTERED / AD

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

Dated: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70937/2016-EX[DB] dated 26/02/2016

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/1999/2006	CCE GHAZIABAD C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
		Name and Address of Respondent
2		MET TRADE INDIA LTD. VILLAGE BHEEL AKBARPUR TEHSIL DADRI G.T.ROAD,,

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 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,Panjagutta 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/1999/2006- [DB]

Arising out of O/A No. 33-CE/GZB/2006 dated 27.03.2006 passed by Commr. (Appeals) of Customs & Central Excise, Ghaziabad .

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

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

Commissioner of Central Excise
Ghaziabad.

...APPELLANT(S)

VERSUS

Met Trade India Ltd. ...RESPONDENT(S)

APPEARANCE

Shri D.K. Deb (Asstt. Commr.) A.R., for the Department
Shri Rajesh Chibber (Advocate), for the Respondent(s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR ASHOK K. ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 26.02.2016

Final ORDER NO. 70937/2016

Per Mr. Anil Choudhary :

This appeal has been preferred by Revenue against Order-in-Appeal No. 33-CE/GZB/2006 dated 27-03-2006.

2. The respondent-assessee is engaged in the manufacture of Refind Lead Ingots, Selium Lead, Unwrought Lead & Silver Bullion. In the course of inspection on 02-08-2002, the stock of finished goods, inputs was verified and shortage was found. The Remelted lead ingots -51.965 MT (Input), unwrought lead - 1318 Kgs. & lead Calcium Alloy-3465 Kgs. (both finished goods) were found short on which duty amounting to Rs.2,28,279/- (Rs.2,01,000/- from Cenvat Account and Rs27,279/ from PLA) was debited on spot on 02-08-2002. On the Silver Bullion manufactured out of raw materials, on which Cenvat credit was availed, the same attracted nil rate of duty which was being cleared to various buyers on cash sale. It appeared to Revenue that as the Silver Bullion is exempt from duty the respondent was required to pay an amount of 8% of the price of such Silver Bullion as per the provisions of Rule 6(3) (b) of Cenvat Credit Rules, 2002.

3. Show Cause Notice, dated 31-10-2002, was issued and same was adjudicated vide Order-in-Original dated 08-09-

2004, confirming the duty of Rs.2,28,279/- under Rule 12 of CCR read with Section 11A on the alleged shortage of Lead ingots, Unwrought and Lead Calcium Alloy, and the amount was appropriated from the deposit already made before issue of SCN. Further, the demand of Rs.18,79,999/- was confirmed under Rule 6(3) (b), with equal amount of penalty for failure to reverse Cenvat credit under Rule 6(3)(b) for clearance of exempted Silver Bullion. Further, penalty was imposed on Rs. 1 lakhs under Rule 25 of CER for contravention of rule 10 of CER, for not maintaining daily production register of lead dross. And further penalty of Rs.50,000/- was imposed on Surender Kumar Chauhan, Manager of the respondent Company. The Revenue preferred the Appeal No. 135--CE/APPL/GZB/05, pursuant to review order passed on 05/09/2005. The ld. Commissioner (Appeals) have observed in his order that Order-in-Appeal No. 02--03--CE/GZB/05 dated 03/01/2005, was passed in the appeal filed by the assessee, and subsequent to that review order was passed on

05/09/2005 and thereafter the appeal by revenue was filed. Accordingly, under the doctrine of merger there was no order of Assistant Commissioner in existence to be reviewed on 05/09/05. Accordingly, the ld. Commissioner (Appeals) held that the appeal of revenue is hit by the doctrine of merger and as such not maintainable.

4. The learned A.R. for revenue relies on the grounds of appeal.

5. The learned Advocate for the respondent assessee relies on the impugned order and prays for dismissing the appeal of the Revenue.

6. Having considered the rival contentions we hold that the appeal of the Revenue before the ld. Commissioner (Appeals) was clearly hit by the doctrine of merger. Accordingly, there is no impropriety or illegality in the impugned order. Accordingly, we dismiss this appeal. The

respondent assessee will be entitled to consequential benefits, if any, in accordance with law.

(Pronounced in the open Court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

सत्यापित प्रति / Certified True Copy
25.10.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, 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