REGISTERED / AD

FAX : 0532-2400149

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

Dated: 08/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70342/2016-SM[BR] dated 22/06/2016

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/Stay/70034/2016	E/70133/2016	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		GALLANT ISPAT LTD P.NO. 5, SEC 23, SAHJANWA,, GORAKHPUR,,UP

Copy To

3Advocate(s) / Consultant(s): SH AMIT AWASTHI,ADV
FLAT NO H-1, IST FLOOR
RADHEY APARTMENT,7/116-A
SWAROOP NAGAR, KANPUR

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

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

SP-70034/2016
& Ex.Appeal No.70133/16

Arising out of OIA No.120/CE/ALLD/2015 dated 03/11/2015 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Allahabad.

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

---

Commissioner of C.Ex. & S.Tax, Allahabad ...APPELLANT(S)

VERSUS

M/s Gallant Ispat Ltd. RESPONDENT (S)

APPEARANCE

Shri V. K. Shastri, Asstt.Commr. (A.R.) for the Respondent
Shri Amit Awasthi, Advocate for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 22.06.2016

Final -ORDER NO. 70342/2016

Per Mr. Anil Choudhary :

The revenue is in appeal against order of the Commissioner (Appeals) by which it has been held that iron ore pellets and fines, which are less than 3 mm size and get separated on the conveyor belt in the process of charging in the furnace, the appellant is not required to reverse input credit under rule 3(5B) of CCR, 2004.

2. SCN was issued as it appeared to revenue that in the process of charging of iron ore pellets in the blast furnace, the pallets of less than 3 mm size fines get separated and are not charged in the furnace which are collected separately and finally destroyed by the appellant as alleged, which amounts to writing off and accordingly the appellant is required to reverse the proportionate input credit under the provisions of Rule 3(5B) of CCR 2004. Accordingly, demand of Rs.26,61,330/- was proposed along with penalty.

3. The appellant contested the SCN stating that the fines pursuant to segregation are lying as waste in the factory premises, and thus, there is no removal of the same and/or destruction and accordingly, the provisions of Rule 3(5B) are not attracted. Further, reliance was placed on Rule 57D of CER, 1944, which specifically provided that Cenvat credit was not to be denied on the ground that part of the input was contained in any waste or refuse or by-product arising out of the final product or inputs had become waste in or relation to the manufacture of final product. The proposed demand was confirmed vide OIO dated 28/11/2014 along with equal amount of penalty under Rule 15 of CCR observing that the appellant have intentionally avoided

reversal of proportionate amount of Cenvat credit involved in the iron ore pellets and fines.

4. Being aggrieved the appellant has filed appeal before the ld. Commissioner (Appeals), who was pleased to call for a report from the assessing authority and a report dated 6/10/2015 was received stating as follows :

> "1. The value of pellets have not been written off by the assessee.
>
> 2. The said pellets fines which were lying in the factory right from the day of manufacturing process during its generation, are now being cleared as generated waste on payment of Cenvat.
>
> 3. No demand has been issued for the subsequent period. In this regard, the assessee had informed vide letter dated 30.05.2013 that since August, 2012, no pellet fines have been generated in the process.
>
> 4. The assessee vide his letter dated 29.09.2015 informed that presently they are getting good quality iron ore pellets and fines are being generated during the process and entire iron ore pellets is being used in the manufacturing of sponge iron."

Accordingly, the ld.Commissioner (Appeals) recorded the findings based on the report of the jurisdictional Assistant Commissioner of Central Excise Division, Gorakhpur, that the value of pellets and fines have not been written off from the books of accounts, as such, Rule

3(5B) of the CCR, 2004 is not applicable. Further, the fines so generated in the course of production, are still lying in the factory premises as on the date of SCN. The ld. Commissioner (Appeals) has relied on the ruling of this Tribunal in the case of CCE, Raigadh Vs. Vikram Ispat Ltd. : 2007 (211) ELT 60 wherein under similar facts and circumstances, it was held that the iron ore pellets or fines separated from inputs in the course of production is in the nature of waste. Their clearance cannot be equated with clearance of inputs. Hence, provisions of Rule 57AB of erstwhile CER, 1944, are not applicable. Further, the assessee had correctly paid applicable rate of duty on removal of waste, iron or fines and no differential duty would be demanded under the provisions of Rule 3(5) of CCR, 2004. It was also held by the ld. Commissioner (Appeals) that the demand raised is premature on the date of show cause notice and there was no written off done by the appellant in the books of account, nor any removal of such fines was undertaken.

5. The ld.A.R. for revenue states that the Board's Circular No. 907/27/2009 – CX dated 7/12/09, provides that where the value of an input on which Cenvat credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input. It was further provided that, if the activity carried out on the work in progress (WIP), cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and treatment for reversal of credit applicable to input would be applicable. As the appellant have not

reversed the Cenvat credit under the provisions of Rule 3(5B) of CCR, 2004, read with Circular No. 907/27/2009-CX dated 7/12/09, the order in original demanding duty and penalty, is justified and the impugned appellate order be set aside.

6. Heard the parties.

7. Having considered the rival contention, I find that the condition precedent under Rule 3(5B) of CCR, 2004 is, if the value of any inputs/goods have been written off fully or partially or wherel any provision to write off fully has been made in the books of accounts, in respect of value of any inputs, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the Cenvat credit taken in respect of the said inputs. I hold that in the facts and circumstances of this case, there being no writing off or removal of inputs under the provisions of Rule 3(5B) of CCR, 2004, the same is not attracted. Accordingly, I dismiss the appeal of Revenue. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law. Stay application also stands disposed off.

(Dictated and pronounced in the open Court)

Sd/-

(Anil Choudhary)
MEMBER (Judicial)

mm

प्रमाणित प्रति /Certified True Copy

14.7

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