FAX : 0532-2400149

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/70934/2016-SM[BR] dated 30/09/2016

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/COD/70243/2016	E/70407/2016	CHAUDHARY STEEL C/O PANKAJ CHAUDHARY,S/O LATE TEJPAL SINGH,NEAR NEHRU MURTI,MANDI KOTLA,CHANDPUR BIJNOR,UP
			Name and Address of Respondent
2			C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3 Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

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. (DISPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70407/2016-EX[SM] With
COD Application No. 70243/2016

(Arising out of Order-in-Appeal No. 114-CE/M-I/2013 dated 30/08/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Chaudhary Steel — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I — **Respondent**

Appearance:

Shri Aalok Arora, Advocate — for Appellant
Shri S.S. Chattopadhyay, Assistant Commissioner, (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 30/09/2016

FINAL ORDER NO....70934/2016.......

Per: Anil Choudhary

Heard on C.O.D. Application, as the Order-in-Appeal is served after delay on 06-02-2016, from which date, appeal is filed in time. Hence, C.O.D. Application is allowed.

2. Heard on merits. The appellant is a manufacturer of M.S. Ingots. An inspection took place by Revenue in factory premises on 07-12-2010 and stock of raw material, finished goods verified. On verification of stock of Runner Riser, Sponge Iron and Iron Scrap, the same were found in confirmity with the stock as per records, there being a negligible difference. So far as stock of M.S. Ingots is concerned against book record of 187.970 MT, stock physically ascertained was 138.285 MT which was ascertained by multiplying 131 number of pieces of Ingots by average weight of 105 Kgs. That the difference of 49.685 MT was worked and out valued at Rs.11,92,440/- (@ 24 thousand per MT). The Authorized person, present in the factory premises, Mr. Vipin Choudhary, Accountant, could not give plausible explanation of shortage and admitted to debit the apparent duty calculated of Rs.1,22,821/- including cess and debited the same by making Entry No. 12 dated 07-12-2010 in RG23A part-II Register. Subsequently, Revenue issued a Show Cause Notice dated 25-11-2011, alleging that it appears the appellant had clandestinely removed the finished goods without issuing any invoice with intention to

evade payment and without payment of duty. As the shortage so found have not been disputed by the Authorized Signatory, Mr. Vipin Choudhary, Accountant. Accordingly, Revenue proposed to recover the amount of duty at Rs.1,22,821/- and appropriate the amount already paid by way of debit, and further penalty was proposed. The Show Cause Notice was adjudicated ex-parte in absence of any reply being filed and the proposed demand was confirmed with appropriation and equal amount of penalty was imposed under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order have been pleased to confirm the demand of duty but have reduced the quantum of penalty to Rs. 1 lakh.

3. Being aggrieved the appellant is before this Tribunal. The ld. Counsel for the appellant urges that in the facts and circumstance of the case it is apparent that the Revenue have only done an estimation of the stock, as number of pieces of ingots have been multiplied by some average weight, the basis of which also was not disclosed in the calculation sheet. Further, it is apparent case of estimation of stock and there are bound to be errors. Further, Revenue have not found any instance of clandestine removal of finished products by the appellant. Accordingly, he prays for setting aside the demand of duty and penalty.

4. The ld. AR. relies on the impugned order. He, further, points out that the appellant have never protested on the method of stocktaking and/or the calculation made on the date of inspection. Accordingly, he prays for dismissing the appeal.

5. Having considered the rival contentions, I am satisfied that the stocktaking exercise by Revenue is by way of estimation, and possibility of errors cannot be ruled out. Further, I find that no instance of clandestine removal have been found by the Revenue. Considering the fact that the appellant never raised any dispute as to the method of valuation and or estimation of stock prior to issue of Show Cause Notice, I uphold confirmation of duty but I delete the penalty retained by the ld. Commissioner (Appeals) as there is no contumacious conduct or suppression found by Revenue on the part of appellant. Thus, the appeal is allowed in part. The appellant will be entitled for consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

25.10.16