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: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70879/2016-SM[BR] dated 16/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	C/MISC/70424/2016	C/70832/2016	HARRY STEEL INDUSTRIES VILLAGE-ANJALI,SUA ROAD,MANDI GOBINDGARH PUNJAB

Name and Address of Respondent

2 C.C. & C.E. & S.T.-NOIDA
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

SAURABH KAPOOR, ADVOCATE
11-YADVINDRA COLONY, THE
MALL, PATIALA,
PUNJAB
147001

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

MISC. APPL. No. C/MISC /70424/2016
Appeal No. C/70832/2016-CU[SM]

Arising out of Order C No. VIII (30) Noida Cus/SIIB/Misc/28/2016 dated 11.08.2016 passed by Commissioner of Customs, Noida.

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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Harry Steel Industries ...APPELLANT

VERSUS

C.C. & C.E. & S.T-Noida ...RESPONDENT

APPEARANCE

Shri Saurabh Kapoor, Advocate for the Appellant
Shri M.P. Damle, Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 16.09.2016

FINAL ORDER NO. 70879/2016

Per Mr. Anil Choudhary :

The appellant have filed the present appeal for modification of the terms of provisional release"" issued by Deputy Commissioner (SIIB), ICD:Dadri vide a communication C No. VIII (30) Noida Cus/SIIB/Misc/28/2016 dated 11.08.2016 with misc. application for early hearing as the goods are lying with the customs.

2. The facts in brief are that the appellant imported about 09 containers declaring the same to contain heavy melting scrap vide bill of entry No. 6012641 dated 16.07.2016 in respect of Container Nos. CRXU311665(20'), GLDU3468742(20'), MSCU1857653(20'), TEXU2588166(20') & Bill of Entry No. 6022288 dated 18.07.2016 in respect of Container Nos. CARU3757779(20'), LCUU2027576(20'), LCUU9155624(20'), MSCU2101927(20') and SCZU7780111(20'). The appellant self assessed the duty payable and have paid the duty of Rs. 3,13,703/- and Rs. 3,90,520/- totaling Rs. 7,04,223/- vide e-Payments Chalans dated 16.07.2016 and 18.07.2016 respectively. It appears to Revenue that appellant have imported secondhand and used pipes and the same are a mix lot containing cut pipes as well as full length pipes. Accordingly, it appears to Revenue that it is a case of misdeclaration and under-valuation by the appellant and after obtaining inspection report from the Chartered Engineer, the Revenue have proposed the enhanced value of Rs. 58,62,285/-. It is further case of the appellant that they have purchased the goods on High Seas Sale and as per the import documents including pre-shipment inspection certificate issued by the importer, the goods have been

stated as metallic scrap, thus there is no *mala-fide* on their part in making the declaration based on the documents of title. In this view of the matter, the terms of "provisional release" in the impugned order are excessive and untenable being :-

i) The appellant to pay the duty in full as merited on the re-classified goods ,

ii) Appellant to execute a bond of an amount equivalent to the value of goods imported as re-determined being Rs. 58,62,285/-. and;

iii) To furnish bank guarantee of an amount equal to 30% of the bond amount or for Rs. 17.59 lakh.

3. The learned counsel for the appellant states that the appellant is a regular importer of the old and used pipes imported for the use of re-melting. He further stated that similar materials were also imported earlier by the appellant and cleared without objection. Accordingly, he prays for modification of the terms of "provisional release".

4. Learned A.R. relies on the terms of provisional release as contained in the impugned order and further relies on notification contained in Provisional Duty Regulations, 2011.

5. Having considered the rival submissions, I find that the conditions imposed for "provisional release" are excessive and accordingly I modify the same as under:-

i) The first condition of payment of duty of the differential duty in full is waived;

ii) The second condition to furnish a bond for the full value as re-determined is retained.

iii) The third condition of providing the bank guarantee is modified and it is ordered to provide the bank guarantee for an amount of Rs. 5.00 lakhs only.

6. Subject to fulfillment of above aforementioned modified conditions, the goods shall be released forthwith to the appellant after retaining samples, if any, required for the purpose of testing and adjudication. The appeal is allowed in part with further direction to the concerned Customs Authority to release the goods within three days on fulfillment of the modified conditions of the provisional release.

7. Thus, the appeal is allowed as indicated above. The Misc. application also stands disposed of.

Order be given 'Dasti'.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

patel/-

प्रमाणित प्रति / Certified True Copy
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