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: 23/03/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70278-70280/2017-SM[BR] dated 03/03/2017

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/1232/2008	APOLLO PIPES PVT LTD D-20, Industrial Area, Sikandrabad. Distt- Bulandshahr(UP)
2	E/1233/2008	BIHAR TUBES LTD A-19,Industrial Area, Sikandrabad-UP
3	E/1234/2008	BIHAR TUBES LTD A-19, Industrial Area, Sikandrabad(UP)

Name and Address of Respondent

	Name and Address of Respondent
4	-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
5	-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
6	-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

7 Bar Association, CESTAT, Allahabad

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

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisma Pitamah Marg, New Delhi-3

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

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

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

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

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

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

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

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/1232-1234/2008-EX[SM]

(Arising out of Order-in-Appeal No. 48-50/CE/APPL/NOIDA/08 dated 10/03/2008 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

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 Apollo Pipes Pvt. Ltd.

M/s Bihar Tubes Ltd. **Appellants**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 03/03/2017
Date of Decision : 03/03/2017

FINAL ORDER NO: 70278-70280/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary

These appeals are filed by the appellant-assessee against Order-in-Appeal No. 48-50/CE/APPL/NOIDA/08 dated 10/03/2008 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. In all these appeals filed by the appellants, manufacturers of pipes and tubes of steel falling under Chapter 73 of the GTA and availing the Cenvat credit facility on inputs, input services and capital goods, the issue is--whether on the facts and circumstances of the case the appellants have rightly taken Cenvat credit on Goods Transport Agency Service (GTA) in respect of outward transportation of the goods beyond the place of removal.

3. In all the three appeals the period in dispute is prior to 01/04/2008 that is prior to the amendment in the definition in Rule 2 (l) of CCR, 2004 on which date in the definition, instead of the words "clearance of final products from the place of removal" the words "clearance of final products up to the place of removal" came to be substituted.

4. Heard the parties.

5. I find that the issue herein have been considered in detail by Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs Philips Carbon Black Ltd. reported at 2016 (44) S.T.R. 253 (Guj.). The Hon'ble High Court has decided the issue in favour of the assessee, by observing as follows:--

"21. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words 'up to the place of removal' used in inclusive part of the definition. Counsel for the assessees submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as go down, warehouse etc. from where it would be ultimately removed, such service is covered in the expression 'outward transportation up to the place of removal' since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression 'outward transportation up to the place of removal'. We are unable to see whether this could be the sole reason for using such expression by the Legislature.

22. Be that as it may, we are of the opinion that the outward transport service used by the manufacturer for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(l) of the Cenvat Credit Rules, 2004."

6. Accordingly, following the law as explained by the Hon'ble High Court, I allow the appeals and set aside the impugned orders. The appellant will be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

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

akp

प्रमाणित प्रति / Certified True Copy
27/03/17
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