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: 26/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71162-71164/2016-EX[DB] dated 08/11/2016

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/2406/2007	CCE MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2	E/2409/2007	CCE MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
3	E/2410/2007	CCE MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
		Name and Address of Respondent
4		ASWAD STEELS & ALLOYS (P) LTD. VILLAGE JARODA, MEERUT ROAD, MUZAFFARNAGAR.,,

5 M. Q. STEELS (P) LTD.
7TH K.M STONE, MEERUT
ROAD, MUZAFFARNAGAR
(UP),,

6 R A CASTINGS (P) LTD.
7TH KM, MEERUT ROAD,
MUZAFFARNAGAR.,,

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

18 C.D.R. 19 Office Copy ~~20~~ Guard File

Asstt. Registrar

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

Appeal Nos.E/2406, 2409 & 2410/2007-EX[DB]

Arising out of Order-in-Original Nos.25, 26 & 23/Commissioner/MRT-I/2007 dated 30.03.2007 passed by Commissioner Customs & Central Excise, Meerut-I.

For approval and signature:

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

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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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Commissioner of Central Excise, Meerut-I (in Appeal No.2406/2007)
Commissioner of Central Excise, Meerut-I (in Appeal No.2409/2007)
Commissioner of Central Excise, Meerut-I (in Appeal No.2410/2007)
...APPELLANT(S)

VERSUS

(i) M/s Aswad Steels & Alloys (P) Ltd. (in Appeal No.2406/2007)
(ii) M/s R A Castings (P) Ltd. (in Appeal No.2409/2007)
(iii) M/s M. Q. Steels (P) Ltd. (in Appeal No.2410/2007)
...RESPONDENT (S)

APPEARANCE:

Shri L. Patra, Asstt. Commr. (A.R.) for the Department
Shri Aalok Arora, Advocates for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 08.11.2016

FINAL ORDER NO.- 71162-71164/2016

Per Mr. Anil G. Shakkarwar:

The above stated three Appeal filed by the Revenue are taken together for decision, since the facts are similar and the grounds of appeal are same in all the three appeals.

2. The brief facts of the case are that M/s Aswad Steels & Alloys (P) Ltd. (referred as M/s ASA) were issued with a show cause notice dated 09.06.2006, wherein it was alleged that M/s ASA and M/s Burnala Steel Industries Ltd. are related person and, therefore, M.S. Ingots manufactured by M/s ASA and cleared to M/s Burnala Industries Ltd. for manufacture of rolled product out of them should be reassessed by re-determining assessable value in terms of Rule 11 read with Rule 9 & 8 of Central Excise Valuation (Determination of Price of excisable goods) Rules, 2000 on the basis of 110% of the cost of production . It was proposed in the said show-cause-notice to demand Central Excise duty of Rs.1,63,85,223.65/- for the period from 2001-02 to 2005-06 under proviso to Sub-Section 1 of Section 11A of Central Excise Act, 1944. The said show cause notice was adjudicated through Order-in-Original No.25/Commissioner/MRT-I/2007 dated 30.03.2007, wherein the Ld. Commissioner has held that all the ingredients of Section 4(1)(a) have been satisfied in the transactions between M/s ASA and M/s Burnala Steel Industries Ltd. (referred as M/s BSIL) and there was no case of resort to said valuation rules and dropped

the proceedings. Aggrieved by the said order, Revenue is in appeal before this Tribunal.

3. In case of respondent No.(ii), M/s R A Castings (P) Ltd., the respondent were issued with similar show cause notice dated 10.06.2006, where same valuation Rules were invoked and it was alleged that M/s R A Castings Pvt. Ltd. & M/s BSIL were related persons. The duty demand for the same period in respect of M/s R A Casting Pvt. Ltd. was Rs.1,55,12,970.08/-. The said show cause notice was adjudicated through Order-in-Original No.26/Commissioner/MRT-I/2007 dated 30.03.2007. In the case of M/s R A Casting Pvt. Ltd., also the Original Authority has recorded ~~to~~ the same findings and dropped the proceedings. Aggrieved by the said Order-in-Original, the Revenue is in appeal before this Tribunal.

4. In case of respondent No.(iii), M/s M. Q. Steels (P) Ltd., the respondent was issued with a similar show cause notice dated 08.06.2006, for the same period invoking same Rules and with the same allegation that M/s M. Q. Steels Pvt. Ltd. & M/s BSIL were related persons. The duty demand in case of M/s M. Q. Steel Pvt. Ltd. was Rs.3,72,02,835.60/-. The said show cause notice was adjudicated through Order-in-Original No.23/Commissioner/MRT-I/2007 dated 30.03.2007. In the said case also the Original Authority has dropped the proceedings. Aggrieved by the said Order-in-Original, the Revenue is in appeal before this Tribunal.

5. The main ground of appeal by Revenue in all the three above stated appeals is that the Adjudicating Authority has merely held that M/s BSIL and the three respondents were not related in terms of Clause (i), (iii) or (iv) of Section 4(3)(b) of Central Excise Act, 1944 without discussing and appreciating, the allegations in the said show cause notice.

6. Heard the Ld. DR for Revenue who has presented the grounds of appeals in all the three above stated appeals.

7. Heard the learned counsel for the respondents. The learned counsel has pleaded that similar matter had came up before Delhi Bench of this Tribunal in Excise Appeal No.E/2407/2007-EX, wherein through Final Order No.54536/2016, the Hon'ble Bench Delhi dismissed the appeal filed by the Revenue.

8. We have taken into consideration the rival contentions. We have gone through all the three show-cause-notices. All the three said show cause notices are similarly worded and para 2.6 of all of them is similarly reworded. In para 2.6 of the said show cause notices, it is stated that for issue of said show cause notice, the duty short paid was worked in terms of Rule 11 read with Rule 9 & 8 of Central Excise Valuation (Determination of price of Excisable goods) Rules 2000. We have perused the said Rule 11 of Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000. It has provided that when the value of any excisable goods cannot be determined under Rule 4 to 10 then value shall be determined using reasonable means consistent

with the principles and general provisions of said Rules and Sub-Section (1) of Section 4 of the Central Excise Act, 1944. We find that Rule 8 of the said Rules provides that when the goods are not sold by the assessee then said Rule is invokable. Rule 9 of said Rule provides that when the assessee arranges sale of goods manufactured by them through a related person, then the value of goods for determination levy of duty is the price at which said related person sales the said goods. It clearly means that if the goods are cleared to a person who is consuming the same, then the provisions of Rule 9 are not applicable. In the present case, show cause notices has invoked Rule 11 and for invoking Rule 11, it has taken assistance of provisions of Rules 8 & 9 of the said Rule. We find that neither the provisions of Rule 8 nor the provisions of Rule 9 are applicable in the present case. Therefore, the show cause notices are not sustainable. Since all the three show cause notices are not sustainable, in view of the above findings, all the three appeals filed by Revenue are dismissed.

(Dictated & pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
2-8-12
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