FAX : 0532-2400149 REGISTERED / AD

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

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70272/2016-EX[DB] dated 20/05/2016

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/2469/2006	CCE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		Name and Address of Respondent
2		PREMIER ALLOYS LTD. MALWAN, FATEHPUR , UP

Copy To

3Advocate(s) / Consultant(s):SH AMIT AWASTHI,ADV
B-1,IST FLOOR
RADHEY APARTMENT
7/116-A, SWAROOP NAGAR
KANPUR

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/2469/06(DB)

(Arising out of Order-in-Original No. 11/Commissioner/LKO/ACP/2005 dated 09/05/2005 passed by Commissioner of Central Excise, Lucknow)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

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

Commissioner of Central Excise, Lucknow **Appellant**

Vs.

M/s Premier Alloys Ltd., **Respondent**

Appearance:

Shri D.S. Maan, Assistant Commissioner (AR), for Appellant
Shri Amit Awasthi, Advocate, for Respondent

CORAM:

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

Date of Hearing : 20/05/2016
Date of Decision : 20/05/2016

[Final] ORDER NO. 70272/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the Revenue against Order-in-Original No. 11/Commissioner/LKO/ACP/2005 dated 09/05/2005 passed by Commissioner of Central Excise, Lucknow, determining the annual capacity of production under Sub-section (1) of Section 3A of Central Excise Act, 1944 and monthly duty liability with efect from 12/10/1999 in respect of respondent.

2. The brief facts of the case are that annual capacity of the unit belonging to respondent was fixed by commissioner of Central Excise, Allahabad through Order dated 21.03.98. The respondent proposed certain changes on 20.11.98. Approval was accorded for making proposed changes. Respondent preferred appeal before this Tribunal against said Order dated 21.03.98. This Tribunal vide final Order No. A/573-77/98-NB(DB) dated 09.07.98 remanded the case to the Commissioner, Allahabad for re-adjudication with the directions to re-determine the amount of duty payable. CCE, Allahabad through Order-in-Original No. (11/2000-Tech) 11 of 2000 dated 25/05/2000, fixed annual capacity of production and monthly duty liability. Aggrieved by the said order dated 25/05/2000 the respondent filed an appeal before this Tribunal. Through Final Order dated 20/09/2000

This Tribunal remanded the case to the Jurisdictional Commissioner for afresh determination of annual capacity of production after furnishing verification reports to the respondent and affording of personal hearing. In compliance to said order dated 20/09/2000 CCE, Allahabad fixed the annual capacity of production as 19,406.26 MT with monthly duty liability of Rs.4,85,156/- with effect from 12/10/99 and the same was communicated to the respondent vide letter dated 01.07.2002 issued by the Deputy Commissioner (Technical) Central Excise, Allahabad. Aggrieved by the said decision communicated on 01.07.2002 respondent preferred appeal before this Tribunal. This Tribunal through Final Order dated 04.03.2003 set aside the order which was not passed by Commissioner and remanded the matter for afresh order. In complance to this Tribunal's said Final Order dated 04.03.2003 impugned order was passed wherein annual capacity of production was decided to be 25571.684 MT and monthly duty liability was determined as Rs.3,19,646/- with the effect from 12.10.1999. Aggrieved by the said order dated 09/05/2005, Revenue is before us contending that Commissioner has erred in determination of annual capacity of production vide impugned order.

3. Learned A.R. has reiterated the submissions made in the application made under Sub-section (1) of Section 35E of Central Excise Act, 1944 and further reiterated grounds of application. He emphasized on ground (f) of application which reads as follows.

"*(f) In the impugned Order-in-Original dated 09.05.2005, the Commissioner had ignored the report of the Technical Expert* *dated 14.01.2000 in which the use of wobbler and the effect thereof was reported. He has also ignore the detailed discussion about the use of the wobbler appearing in Order-in-Original dated 25.05.2000 of the CCE, Allahabad."*

4. Learned Counsel for the respondent has argued that impugned order is passed as per the directions of this Tribunal through said final Order dated 04.03.2003 and on the basis of Precedent order of this Tribunal in the case of Popular Iron & Steels Co. Vs. CCE, Allahabad 2001 (129) E.L.T. 751 (Tri-del.) and revenue has failed to make out any ground for setting aside the impugned order.

5. We have considered the rival contentions. From the grounds of application, we find that Revenue could not make out any ground to establish that the impugned order is in any manner deviated from complying with the directions of this Tribunal given in said Final Order dated 04.03.2003. We further note that one of the grounds for application is that the adjudicating authority ignored the detailed discussion about the use of wobbler appearing in O-I-O dated 25.05.2000 passed by CCE, Allahabad. The fact is that the said Order-in-Original dated 25.05.2000 was set aside by this Tribunal through Final Order dated 20.09.2000 through which case was remanded to Jurisdictional Commissioner. The said Order-in-Original dated 25.05.2000 did not exist in law as on 09.05.2005. Therefore not having taken the detailed discussion appearing in Order-In-Original dated 25.05.2000 by the adjudicating authority for passing order dated 09.05.2005 is not a ground tenable in law. We, therefore, hold that

Revenue could not make out a case for interference by this Tribunal.

We therefore, dismiss the appeal filed by the Revenue. No costs.

(Dictated in Court)

AG

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

akp