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/71155/2016-EX[DB] dated 07/11/2016

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/2510/2007	**LOHIA BRASS (P) LTD.** LAKRI FAZALPUR,DELHI ROAD,MORADABAD
		Name and Address of Respondent
2		-C.C.E. MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

Copy To

3Advocate(s) / Consultant(s):

RUPESH KUMAR
F - 12A, (L.G.F) KAILASH COLONY,
NEW DELHI,
110048

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.7 (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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 1

APPEAL No. E/2510/2007-EX[DB]

(Arising out of Order-in-Appeal No. 136-137-CE/MRT-II/2007 dated 29/06/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

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

M/s Lohia Brass (P) Ltd. — **Appellant**

Vs.

Commissioner of Central Excise, Meerut — **Respondent**

Appearance:

Shri Atul Gupta, Advocate, — for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 07/11/2016

FINAL ORDER NO....71155/2016.......

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Lohia Brass (P) Ltd., against Order-in-Appeal No. 136-137-CE/MRT-II dated 29/06/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut.

2. The brief facts of the case are that the appellants were issued with a Show Cause Notice dated 14/11/1996 for the period from October, 1994 to 31/05/1996 calling upon the appellant to show cause as to why penalty not exceeding three times the value of excisable goods in respect of which the appellant appeared to have contravened the Rules such as Rule 173-B, 173-G & 173-F of Central Excise Rules, 1944 were contravened should not be imposed under Rule 173-Q(1) of Central Excise Rules, 1944. Another Show Cause Notice dated 30/12/1996 was issued to the appellant with similar proposals for the period from June, 1996 to September, 1996. One more Show Cause Notice was issued to the appellant is dated 08/04/1997 and was issued on similar lined covering a period from October, 1996 to February, 1997. The issued in the Show Cause Notice was that Untrimmed Sheets and Circles of Brass & Copper were being manufactured by the appellant which were captively consumed in the manufacture of Trim Sheets and Circles and

that there was no clearance of Untrimmed Sheets and Circles and that Trim Sheets and Circles were exempted from Central Excise duty. The dispute was regarding dutiability of Untrimmed Sheets and Circles which were not being cleared by the appellants. The said Show Cause Notices were decided through Order-in-Original 153-158/MBD/2005 dated 19/10/2005. The Original Authority followed the Final Order No. 640-641/99-C dated 14/07/1999 & Final Order No. 64-65/2000-B dated 10/01/2000 both passed by this Tribunal and stated in his Order-in-Original that both the said orders were accepted by Revenue and were not challenged before any further appellate forum. The Original Authority has held that in view of the fact that the decision of this Tribunal has attained finality and following the decision of this Tribunal in said Final Orders he dropped the proceedings initiated by the said three Show Cause Notices. This Tribunal through Final Orders No. 640-641/99-C dated 14/07/1999 in Para 12 had held as follows:-

> "On careful analysis of the rival submissions, we find that no evidence has been placed on record to prove that Untrimmed Sheets are marketable and since marketability of these goods is not proved, therefore, they will not be liable to duty."

This Tribunal in Final Order No. 64-65/2000-B dated 10/01/2000 has observed that the Tribunal has also extended the benefit of Notification No. 1/1993 holding that the value of Untrimmed Sheets is not be taken into account for calculating the aggregate value of clearance of Trimmed Sheets and Circles. Aggrieved by the said Order-in-Original 153-158/MBD/2005 dated 19/10/2005, Deputy Commissioner of Central Excise, Moradabad filed appeal before Commissioner (Appeals), Meerut-II. The ld. Commissioner (Appeals), Meerut-II decided the said appeal through Order-in-Appeal No. 136-137-CE/MRT-II dated 29/06/2007, holding that the Untrimmed Copper Sheets are excisable goods and accordingly liable to duty. Aggrieved by the said Order-in-Appeal the appellant has filed appeal before this Tribunal.

3. Heard the ld. Counsel who has submitted that as recorded by the ld. Commissioner (Appeals) at Para 12 of the impugned Order-in-Appeal, it was brought to the notice of Commissioner (Appeals) that this Tribunal decided the matter in their favour through its Final Order No. No. 640-641/99-C dated 14/07/1999 and that the Adjudicating Authority in the Original Adjudication has rightly dropped the proceedings, wholly relying on the order passed by this Tribunal and that Commissioner of Central Excise, Meerut-II has erred in issuing the authorization for filing the appeal against the decision of Tribunal and that the appeal before ld. Commissioner (Appeals) was erroneous, bad in law and was filed without application of mind. He has further pleaded that in spite of bringing this Tribunal's decision in their own case

on the same issue, the ld. Commissioner (Appeals) in Para 21 of impugned Order-in-Appeal dated 29/06/2007 has held that merely because the assessee were not selling or marketing Untrimmed Sheets of Copper due to captive consumption and that is why product is not being sold does not mean that Untrimmed Sheets of Copper are not capable of being marketed and further held that Untrimmed Sheets of Copper are excisable goods and such finding was contrary to the finding of this Tribunal when the final order passed by this Tribunal was not challenged before any higher Appellate Forum.

4. Heard the ld. D.R. has presented the findings of ld. Commissioner (Appeals).

5. We have carefully gone through the order passed by this Tribunal through Final Order No. No. 640-641/99-C dated 14/07/1999 & Final Order No. 64-65/2000-B dated 10/01/2000. We find that this Tribunal has categorically in Para 12 of said final order dated 14/07/1999 held that Untrimmed Sheets of Copper are not liable to duty because the marketability of the said has not been proved. In respect of such a clear finding on the issue ld. Commissioner (Appeals) deviated from the judicial discipline and has held in the impugned Order-in-Appeal No. 136-137-CE/MRT-II dated 29/06/2007, that Untrimmed Sheets of Copper are excisable goods. We, therefore, find that the impugned Order-in-Appeal

is bad in law. We, therefore, set aside the impugned Order-in-Appeal and hold that the Order-in-Original dated 19/10/2005 is restored. In above terms the appeal is allowed. The appellants shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति / Certified True Copy
28.12
सहायक पंजीयक / 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