FAX : 0532-2400145

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

Dated: 27/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70733/2016-SM[BR] dated 26/08/2016

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/CROSS/146/2008	E/2745/2007	CCE ALLAHABAD 38,M.G.MARG, CIVIL LINES, ALLAHABAD
			Name and Address of Respondent
2			INDUSTRIEAL HUME PIPE 115,M.G.MARG, CIVIL LINES, ALLAHABAD (U.P),,

Copy To
Advocate(s) / Consultant(s):

3 Bar Association, CESTAT, Allahabad

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

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

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

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

8 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD
COURT No. 1

Appeal No. : E/2745/2007- EX [SM] With
Cross Objection No. : E/CROSS/146/2008

Arising out of O/A No.148 to 150/CE/ALLD/2007 dated 24.07.2007 passed by Commissioner (Appeals) of Customs, Central Excise , & Service Tax, Allahabad.

For approval and signature:

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, Allahabad. ...APPELLANT(S)

VERSUS

Industrial Hume Pipe ...RESPONDENT(S)

APPEARANCE:

Shri D.K. Deb, Assistant Commissioner (AR), for the Department
Shri S.P. Ojha, Consultant, for the Respondent(s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 26.08.2016

FINAL ORDER NO. - 70733/2016

Per Mr. Anil G. Shakkarwar :

The present appeal is filed by Commissioner of Central Excise, Allahabad, challenging the Order-in-Appeal No. 148-150/CE/ALLD/2007 dated 24-07-2007.

2. The brief facts of the case are that the respondent, M/s Industrial Hume Pipe, Allahabad was issued with a Show Cause Notice dated 25-04-2005 calling upon the respondent to show cause as to why the sum of Rs.9,57,986/- should not be recovered from them under Section 11D of Central Excise Act, 1944. They were further required to show cause as to why a sum of Rs.14,53,536/- should not be demanded under proviso to Sub-section 1 of Section 11A of Central Excise Act, 1944. There were proposals for imposition of personal penalty on Shri J.P. Singh and Shri S.P. Singh. The said Show Cause Notice was adjudicated through Adjudication Order No. MP (Dem -52/2005) 50 of 2006 dated 26-12-2006 wherein both the demands were confirmed. Further, M/s Industrial Hume Pipe, Allahabad were imposed with a penalty of Rs.14,53,536/-, Shri J.P. Singh was imposed with a penalty of Rs.1 lakh & Shri S.P. Singh was imposed with a penalty of Rs.5 lakhs. The said Original-in-Original was challenged by M/s Industrial Hume Pipe, Allahabad, Shri J.P. singh and Shri S.P. Singh before ld. Commissioner of Central Excise (Appeals), Allahabad. After considering the issue, the first appellate authority has remanded the matter back to the Original Authority through Order-in-Appeal No. 148-150/CE/ALLD/2007 dated 24-07-2007.

3. Aggrieved by the said Order-in-Appeal, Commissioner of Central Excise, Allahabad preferred appeal before this Tribunal.

4. Heard the ld. D.R. for the appellant & also heard the ld. Consultant for the respondent. The respondent has filed Cross Objection in this appeal. After some hearing, it appeared that the order passed by ld. Commissioner (Appeals) remanding the matter back to the Original Authority is contrary to the provisions of Section 35A of Central Excise Act, 1944. Therefore, the provisions of Section 35A of Central Excise Act, 1944 were examined. I find that Sub-section 3 of Section 35A of Central Excise Act, 1944 was amended through Section 128 of Finance Act, 2001 through which the powers of the Commissioner (Appeals), to remand the matter back to the Original Authority were withdrawn. In view of the same, I set aside the impugned Order-in-Appeal dated 24-07-2007 and remand the matter back to the Commissioner (Appeals) of Central Excise having jurisdiction over the Original Authority i.e. presently Commissioner of Central Excise (Appeals), Lucknow and direct the Commissioner of Central Excise (Appeals), Lucknow to decide the matter within 3 months from the date of receipt of this order. The Cross Objection is also stand disposed. The appeal filed by Commissioner of Central Excise, Allahabad is disposed in above terms.

(Dictated and pronounced in the open court)

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

(Ansari)

प्रमाणित प्रति / Certified True Copy

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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