FAX : 0532-2400149

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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70978/2016-EX[DB] dated 26/09/2016

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/3159/2007	CCE LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		Name and Address of Respondent
2		KWALITY METAL WORKS GALI TABELA, HATHRAS (UP),,

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

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

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

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. ... SECTION)
CUSTOMS, ... SERVICE TAX
APPELLATE ...
38, M. G. ... ALLAHABAD ... 211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/3159/2007-EX[DB]

(Arising out of Order-in-Appeal No. 105-CE/LKO/2007 dated 26/09/2007 passed by Commissioner of Central Excise & Customs (Appeals), 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 Kwality Metal Works **Respondent**

Appearance:

Shri Sumanta S. Chattopadhyay, Superintendent, (AR), for Appellant
On Merits. for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 26/09/2016

FINAL ORDER NO. 70978/2016

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Kwality Metal Works, against Order-in-Appeal No. 105-CE/LKO/2007 dated 26/09/2007 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The brief facts of the case are that as per ER-I quarterly returns for the period from October, 2004 to March, 2005, it was observed that the appellants have manufactured and cleared Brass Ingots/Billets Weighing upto 5 Kgs and Brass Billets/Ingots weighing above 5 kgs, Granules and Slag claiming the exemption on Brass Ingots/Billets upto 5Kgs, Granules and Slag under Notification No. 9/2003-CE. The exemption is available on Brass weighing up to 5 Kgs and Slag only as it has not been specified in annexure to the Notification No. 9/2003-CE. It appeared to Revenue, the appellants have availed inadmissible exemption and paid duty at concessional rate including Education Cess to the tune of Rs.2,93,772/-.

2.1 Therefore, a Show Cause Notice dated 05-01-2006 was issued to them demanding duty and Education Cess with interest along with the proposal of penalty. After hearing the appellants, the impugned order was passed confirming the show cause, aggrieved with which the appellants have filed this appeal.

2.2 The appellants have taken the following grounds in appeal:-

(a) that the impugned Order-in-Original is based on misinterpretation of Chapter 72 & 74 of the Schedule to the Central Excise tariff Act, 1985, this not sustainable.

(b) that the Adjudicating Authority has mentioned at page 14 of the impugned order in para 1 of discussions and findings that there are two issues to be decided in Show Cause Notice.

(i) whether Brass Granules would merit the benefit of notification No. 9/2003.

(ii) whether Brass Ingots/Billets weighing up to 5 Kgs would merit the benefit of Notification No. 9/2003.

In this regard the appellants have submitted that they are declaring their goods under the same tariff heading and are also availing the benefit of SSI Exemption since 1991. No objection regarding classification of their product or the availment of the benefit of Notification No. 9/2003-CE as well as preceding notification had ever been raised by the Department and the classification of goods cannot be changed without issue of Show Cause Notice. Moreover, the benefit is available to them hence the order or demand is not sustainable and liable to set aside.

3. Heard the parties.

4. Having considered the rival contentions, we find that the issue involved herein is whether Brass Ingots and Granules would merit the benefit of Notification No. 9/2003-CE dated 01-03-2003. The present issue is no longer res-integra and the same is settled by this Tribunal in favour of the assessee-respondent vide Final Order No. 70055-70057/2016 dated 13-01-2016 in the case of Commissioner of Central Excise, Lucknow *Versus* Kwality Metal Works. Following the ratio of the decision dated 13-01-2016 passed by this Tribunal (supra), we dismiss the appeal filed by the Revenue after setting aside the impugned order.

(Dictated and pronounced in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
26.10.16
सहायक रजिस्ट्रार / 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