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: 15/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71060-71061/2016-SM[BR] dated 04/11/2016

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/413/2010	V.V.S. ALLOYS LTD. B-46 & B-47, UPSIDC, INDUSTRIAL AREA, MALWAN, DISTRICT-FATEHPUR.
2	E/414/2010	SHRI VIJAY KUMAR AGRAWAL, DIRECTOR OF M/S V.V.S. ALLOYS LTD. B-46 & B-47, UPSIDC, INDUSTRIAL AREA, MALWAN, DISTRICT-FATEHPUR.
		Name and Address of Respondent
3		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. -
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. -

Other Appellants and Respondents as per Annexure

23-11-16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M.G. MARG, ALLAHABAD.

Copy To
5Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR,UTTAR PRADESH
208002

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/413 - 414/2010-EX[SM]

(Arising out of Order-in-Appeal No. 226-227-CE/LKO/2009 dated 26/11/2009 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

For approval and signature:

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 V.V.S. Alloys Ltd., Shri Vijay Kumar Agrawal, Director of M/s V.V.S. Alloys Ltd., Appellant

Vs.

Commissioner of Central Excise, Lucknow Respondent

Appearance:

Shri Anil Kumar Dixit, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 04/11/2016

FINAL ORDER NO: 71060 - 71061/2016

Per: Anil G. Shakkarwar

The present two appeals are filed by the appellant, M/s V.V.S. Alloys Ltd., & Shri Vijay Kumar Agrawal, Director of M/s V.V.S. Alloys Ltd., against the same Order-in-Appeal No. 226-227-CE/LKO/2009 dated 26/11/2009 passed by Commissioner of Central Excise & Customs (Appeals) Lucknow.

2. The brief facts of the case are that the appellants were issued with a Show Cause Notice dated 29/09/2008 proposing recovery of Cenvat credit amounting to Rs.93,490/- under Rule 14 of Cenvat Credit Rules, 2004 & Rule 12 of Cenvat Credit Rules, 2002. The allegations were that the appellants received invoices from, M/s M.K. Steels, Kolkata and M/s Kartikeya Enterprises, Kanpur, without receipt of any goods. The demand was confirmed through Order-in-Original No. 23/DEM/RBL/2009 dated 16/03/2009. The appellant preferred appeal before Commissioner (Appeals). The appeal was decided through Order-in-Appeal No. 226-227-CE/LKO/2009 dated 26/11/2009. The ld. Commissioner (Appeals) did not interfere with the Order-in-Original No. 23/DEM/RBL/2009 dated 16/03/2009, and rejected the appeal. Aggrieved by the said Order-in-Appeal No. 226-227-CE/LKO/2009 dated 26/11/2009 the appellant is before this Tribunal.

3. The ld. Counsel for the appellant has submitted that the allegations are that the inputs were not received into the factory of appellant though the copies of transport documents are available at Pages 157 to 172 of Appeal Paper Book. Even, though, the goods were not transported, the ld. Commissioner (Appeals) in Para 9 of his impugned order observed that the appellants did not submit the transport documents for transportation of goods to their factory. He, further, brought to my notice that at Page 5 of the impugned order in Para 5 Sub-para (iii), it was stated before the ld. Commissioner (Appeals) that the inputs carried by the transporters had entered into factory of appellant. He, therefore, argued that the finding that the inputs were not transported is contrary to the facts.

4. The ld D.R. has supported the impugned Order-in-Appeal.

5. I find from Para 9 of the impugned order that the ld. Commissioner (Appeals) has observed that the appellants did not submit the transport documents for transportation of goods to their factory. I also find that the ld. Commissioner (Appeals) has recorded as grounds of appeal that the appellant claimed that the inputs carried by the transporters were entered into factory and the description of the same had been duly recorded in the input records. In that event, Commissioner (Appeals) should have given opportunity to the appellant to produce copies of the transport documents.

Since, such opportunity was not given by the ld. Commissioner (Appeals) before holding that the appellants did not submit the transport documents, he has violated observance of principles of natural justice. Therefore, the matter is remanded back to ld. Commissioner (Appeals) for De-novo Adjudication of impugned Order-in-Appeal by setting aside the impugned Order-in-Appeal dated 26/11/2009. The appellants shall submit a copy of this order along with evidences they wish to rely upon to establish transportation of inputs to their factory within 45 days of receipt of this order into the office of the Commissioner (Appeals) and thereafter, Commissioner (Appeals) shall pass order in de-novo proceedings within another 45 days after giving opportunity to the appellant to present their case. Both the appeals are allowed by way of remand.

(Dictated and pronounced in Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
17.1
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