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

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71189/2016-SM[BR] dated 16/12/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/3588/2010	BHIGRU ALLOYS & STEELS (P) LTD., VILL. FITKARI, MAWANA, DISTT. MEERUT.
		Name and Address of Respondent
2		-C.C.E. MEERUT I EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.

Copy To
3Advocate(s) / Consultant(s):

AALOK ARORA, ADVOCATE
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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.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 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

Appeal No. : E/3588/2010-EX[SM]

Arising out of OIA No. 171-172-CE/MRT-I/2010-11 dated 30.08.2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I.

Bhigru Alloys & Steels (P) Ltd. ...APPELLANT

VERSUS

C.C.E. -Meerut-I ...RESPONDENT

APPEARANCE

Shri Aalok Arora, Consultant for the appellant.
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 16. 12. 2016

FINAL ORDER NO. 71189/2016

Per Mr. Anil G. Shakkarwar :

The present appeal is against the Order-in-Appeal No. 171-172-CE/MRT-I/2010-11 dated 30.08.2010.

2. The brief facts of the case are that, a show cause notice dated 02.09.2009 was issued to the appellant wherein in para-3 it was stated that appellant had contravened the provisions of Rule 8(3A) of Central Excise Rules, 2002. In view of alleged contravention of said Rule 8(3A) Central Excise duty amounting to Rs, 1100080/- was demanded from the appellant. The show cause notice was adjudicated through Order-in-Original No. 04/ADC/MRT-I/2010 dated 27.01.2010. The Original

Authority confirmed the demand. The issue was carried before the Commissioner (Appeals). The learned Commissioner (Appeals) through impugned Order-in-Appeal partially allowed the appeal by confirming the demand and reducing penalty ~~for~~ from Rs. 3 lakhs to Rs. One lakh. Aggrieved by the said order, the appeal is before this Tribunal.

3. Shri Aalok Arora, Consultant submitted that the entire duty has been paid as admitted in the show cause notice. The only allegation in the show cause notice was that the appellant had contravened the provision of Rule 8(3A) of Central Excise Rules, 2002 and he further contended that Hon'ble High Court at Allahabad through its ruling in the case of ***A.T.V. Projects India Ltd. vs. Union of India*** reported at ***2016 (341) E.L.T. 603 (All.)*** has held that Rule 8(3A) of Central Excise Rules, 2002 is *ultra vires* of Article 14 of the Constitution of India.

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

5. I have considered the rival contentions and perused the records. I find that in the case law cited by the appellant Hon'ble High Court at Allahabad has held that Rule 8(3A) of Central Excise Rules, 2002 is *ultra vires* of Article 14 of the Constitution of India. In view of the said ruling, I hold that the impugned show cause notice is not sustainable. I, therefore, set aside the Order-in-Original and Order-in-Appeal and allow the appeal filed by the appellant.

(Pronounced and dictated in the open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Patel/-

प्रमाणित प्रति / Certified True Copy
6.1.17
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