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/70956/2016-SM[BR] dated 23/09/2016

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/415/2009	BIHAR TUBES LTD. A-19, INDUSTRIAL AREA, SIKANDRABAD (U.P.)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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

M. P. SINGH
RZP-237 (FIRST FLOOR), GALI NO. 4,
RAJ NAGAR-II, NEW DELHI-110077.
F-BLOCK, VIKASPURI,
NEW DELHI

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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

APPEAL No. E/415/2009-EX[DB]

(Arising out of Order-in-Appeal No. 135-CE/APPL/NOIDA/2008 dated 19/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II (Noida))

For approval and signature:

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

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 Bihar Tubes Ltd. — **Appellant**

Vs.

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

Appearance:

Shri, Rajesh Chibber, Acvocate, for Appellant
Shri Pawan Kumar Singh, Superintendent, (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 23/09/2016

FINAL ORDER NO...70956/2016...

Per: Anil Choudhary

The present is filed by appellant, M/s Bihar Tubes Ltd., against Order-in-Appeal No. 135-CE/APPL/NOIDA/2008 dated 19/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II (Noida).

2. The brief facts of the case are that the appellants are engaged in the manufacture of Tubes & Pipes of iron & Steels falling under Tariff Chapter No. 73. During the period from April, 2007 to November, 2007 they sold their finished products, making delivery of the same from the factory gate to the buyer's premises through the transport agencies and took credit of Service Tax paid on freight/transportation of the said goods, claiming it as input service. It was alleged against the appellants that the goods having been sold at their factory gate, the place of removal was the factory, hence the outward transportation of the goods was not an 'input service' as defined in rule 2 (1) of the Cenvat Credit Rules, 2004. According to the Department, Rule 2 (1) of the Cenvat Credit Rules, 2004 provides for credit on outwards transportation up to the place of removal only. Thus, the appellants were alleged to have wrongly taken the input service credit of Rs.4,74,601/- (Rs.4,61,455/- Service Tax, Rs.9,321/- Education Cess & Rs.3,825/- Higher Education Cess) in respect of the said outward transportation. Subsequently, they reversed the said amount of Rs.4,74,601/- 'under protest'.

2.1 A Show Cause Notice Dated 29-02-2008 was issued to the appellants proposing (i) confirmation/appropriation of demand/recovery of amount of Rs.4,74,601/- from them under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A of Central Excise Act, 1944, (ii) demand of interest on the said amount under Section 11 AB of the said Act (iii) imposition of penalty on them under Rule 15 of the said Rules read with Section 11AC of the said Act. The Adjudicating Authority vide impugned order confirmed and appropriated the above demand of Rs.4,74,601/-. He also confirmed the due interest. He, however, did not impose any penalty upon the appellant.

3. Heard the ld. Counsel for appellant and the ld. AR for the Revenue. The present issue is in regard to availment of Cenvat credit on GTA Services, for outward transport services from the factory to buyers premises. The present issue is no longer res-integra and same is covered in favour of the appellants by the judgment of this Tribunal in the case of Palco Metals Ltd. *Versus* Commissioner of Central Excise, Ahmedabad reported at 2012 (280) E.L.T. 299 (Tri. – Ahmd.). Following the above cited decision, I set aside the impugned order and allow the appeal. The appellant shall be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

सत्यापित प्रति / Certified True Copy

26.10.16

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001