CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 14/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70106/2016 & MISC ORDER NO 70107/2016 SM dated 04/03/2016

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 |
|---|---|---|
| E/ROM/55914/2014 | E/438/2012 | CHINTPURNI ENGINEERING WORKS P LTD<br>WALLMAX HOUSE<br>HIG-4, SECTOR-E<br>ALIGANJ, LUCKNOW(UP) |

Name and Address of Respondent: COMMISSIONER OF CENTRAL EXCISE, LUCKNOW
7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

**Copy To**

3 Advocate(s) / Consultant(s  SH VINEET KR SINGH,ADV
HOUSE NO 5,SECTOR 13
INDIRA NAGAR, LUCKNOW

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

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

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**REGIONAL BENCH : ALLAHABAD**

**MA (ROM) -55914/14**
**& Ex.Appeal No.438/12**

Arising out of OIA No.407-CE/LKO/2011 dated 28/11/2011 passed by the Commissioner (Appeals), Central Excise & Customs, Lucknow.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

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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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M/s Chinttpurni Engineering Works (Pvt.) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Lucknow RESPONDENT (S)

APPEARANCE

Shri Vineet Kumar Singh, Adv. for the Appellant (s)
Shri P. K. Singh, Supdt. (A.R.) for the Respondent

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 04.03.2016

Final ORDER NO. 70106/2016 & M.O 70107/2016

**Per Mr. Anil Choudhary :**

The appellant have filed the present Misc.Application No.E/ROM/55914/2014 seeking rectification of mistake in Final Order No.53288/2014 dated 20.08.2014, vide which, the appeal was rejected.

2. The ld.Counsel for the appellant, states that certain material facts have escaped for consideration while passing the final order. He states that the main contention in the appeal was that there is no actual shortage of physical stock as compared to the record maintained. He further states that at the time of inspection, it was urged by the Person-in-Charge, Director of the Company that the Excise Clerk, who facing mental agony during the period, comitted some clerical mistakes which was the result of apparent discrepancy in the stock, as noticed on the date of inspection on 17.06.2009.

3. The ld.Counsel further demonstrates from the copy of Challan issued for clearance and the stock book maintained. He refers to the Table at page 2 of the show-cause notice, wherein the result of physical stock taking are mentioned and shortage/excess is reflected.

3.1 As regards, bearing plates, it is demonstrated that vide Challan No.96 dated 26.05.2009, number of bearing plates cleared was 150, whereas in the stock book, the same has been shown as 350, thereby, showing excess clearance of 200 plates. In the Table in SCN, the excess quantity is shown as 202. On reconciling thereby, the net shortage is only 2 plates. Similarly, for Tie Plate, as per SCN, the shortage is shown as 418 pcs. It is demonstrated that 400 pcs. were cleared vide a Challan No.96 dated 26.05.2009, but no entry was made in the stock book. On reconciling thereby, the net shortage is only 18 pcs. Similarly, for Tie Bar, as per SCN, the shortage is shown as 52 pcs. It is demonstrated that 50 pcs. are cleared vide Challan No.96 dated 26.05.2009, but the same is not accounted for in the stock book. On reconciling thereby, the net shortage is only 2 pcs.. Similar, for M.S.Plate, as per SCN, the shortage is shown as 104 pcs. It is explained that 125 pcs. are cleared vide Challan No.96 dated 26.05.2009, but debit in stock book is only 25 pcs. On reconciling thereby, the net shortage is only 4 pcs..

3.2 The ld. Counsel further states that from the documents, all shortages/excess, are reconcilable, due to clerical error found at the time of inspection of books of account and physical stock. He further argues that the finished goods are cleared only to Railways, which is the sole buyer. Further, there is no instance on record of any clandestine removal of the finished goods and raw materials. Accordingly, he prays for re-call of the Final Order and further prays for remand of the matter to the adjudicating authority for re-consideration.

4. The ld.A.R. for the Revenue relies on the impugned order.

5. After considering the rival submissions, there appears to be force in the arguments of the ld.Counsel for the appellant and he has demonstrated that there appears to be genuine clerical errors in the maintenance of record, which are reconcilable. I further notice that

these documents, which have been produced and demonstrated before this Tribunal, were not produced before the Court below. Thus, in the interest of justice, I recall the said Final Order dated 20.08.2014 and allow the appeal by way of remand to the adjudicating authority to consider the evidences and reconciliation statements, etc. as produced by the appellant and pass a reasoned order in accordance with law. I further direct the appellant to appear before the adjudicating authority within a period of 60 days from the date of receipt of a copy of this order and seek opportunity of hearing.

6. Thus, the Misc.Application is allowed and the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

**(Anil Choudhary)**
**Member (Judicial)**

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