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: 16/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70051-70052/2017-EX[DB]** dated **10/01/2017**

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/1988/2005	**Prem Steels Pvt.ltd.** Begrajpur Meerut Road Muzffar Nagar U.p.
2	E/1989/2005	**PREM STEELS PVT.LTD.** Begrajpur Meerut Road Muzaffarnagar U.P.
		Name and Address of Respondent
3		-C.C.E.MEERUT-I Mangal Panday Nagar, Meerut Road Muaffarnagar U.P.

Other Appellants and Respondents as per Annexure

Copy To

4Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

5 Bar Association, CESTAT, Allahabad

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

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

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

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

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

15 C.D.R. 16 Office Copy 17 Guard ~~File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/1988 & 1989/2005-EX[DB]

(Arising out of Order-in-Appeal No. 33-CE/APPL/MRT-I/05 dated 29/03/2005 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

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

M/s Prem Steels Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 28/09/2016
Date of Decision : 28/09/2016

FINAL ORDER NO-70051-70052/2017..

Per: Anil Choudhary

These two appeals are filed by the appellant assessee against Order-in-Appeal No. 33-CE/APPL/MRT-I/05 dated 29/03/2005 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The issue in these appeals, filed by the appellant assessee is whether the appellants - manufacturer of M.S. Ingots who had initially opted to pay duty under the provisions of Rule 96ZO read with Section 3A of the Central Excise Act and subsequently in the month of April/May, 1998 changed option to pay duty on actual production basis, is liable to pay duty under Section 3 or under Section 3A, on the compounded levy amount or on the basis of actual production, for the period April, 1999 to March, 2000.

3. Heard the parties.

4. The Learned Advocate for the appellant have urged that the appellant under the provisions of Subsection 4 of Section 3A, which provides--where an assessee claims that the actual production of notified goods in his factory is lower than the production determined under Sub-section 2 (Annual capacity), the Commissioner of Central excise shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the actual production and re-determine the amount of duty payable by the assessee with reference to such actual production at the rate specified in Subsection

3. In the earlier round of litigation between the parties this Tribunal in Appeal No.E/794/99–NB with E/809/99–NB vide Final Order No.A/387–88/99-NB dated 4th May, 1999, following the ruling in the case of Meenakshi Castings of this Tribunal held that Rule 96ZO(3) is in conflict with Sub-section 4 of Section 3A of the Act and it is settled law that where there is conflict between the Section and the Rule, Rule never overrides the Section. This Tribunal remanded the matter for determination of Annual Capacity of Production on the basis of actual production in terms of Section 3A(4) of the Act. This Tribunal further held that the appellant had the option to avail the benefit of Section 3A(4) and accordingly allowed the appeal by way of remand with direction to the authority for examination of the appellant's claim for determination of Annual Capacity of Production (ACP), on actual production basis, under the provisions of Section 3A(4) of the Act. Further, appeal of revenue before the Hon'ble Supreme Court against this order was dismissed on the ground of limitation. We also take notice that for the preceding period 1998–99, this Tribunal in the litigation between these very parties in Appeal No.E/33590/2004–NB (A) vide Final Order No. 424/05–NB dated 30/03/2005 taking notice of the earlier order and rejection of the appeal of revenue by The Hon'ble Supreme Court, held that the Commissioner was bound to follow the previous order and accordingly consider the application of the appellant dated 18th May, 1998 for the re-determination of duty on actual production basis. Referring to the ruling of Hon'ble Bombay High Court in the case of Union of India Vs Ricoh Gems Corporation

Aur

[1987 (32) E.L.T. 644(Bom.)], it was observed that the Commissioner is bound to follow the directions of the Tribunal and should comply with the order for the previous period also, that is 01/09/1997 to 31/03/1998, and for the period 01/04/1998 to 31/03/1999, he should comply with the order of this Tribunal as directed in Final Order No. A/214/03–NB (C) dated 08/04/03 after giving opportunity of hearing to the appellants.

5. That subsequently order of this Tribunal dated 30/03/2005 was also challenged in appeal by Revenue and vide order dated 16/07/2015 the Revenue's appeal was dismissed and the Hon'ble Supreme Court passed the following order: –

> "the appeal of the respondent was allowed by the CESTAT, inter-alia, on the ground that the issue involved had already been considered by the Tribunal while remanding the case in Final Order No.A/387 – 388/99–NB dated 4th May, 1999 and, therefore, the appellant (that is revenue) could not issue another show cause notice and levy Excise Duty in as much as the earlier proceedings which had attained finality, operate as res judicata. We entirely agree with the aforesaid conclusion arrived at by the Tribunal and find no merits in this appeal."

6. Considered the rival submissions and the pronouncements under similar facts and circumstances of this Tribunal as affirmed by the Hon'ble Supreme Court. We allow these appeals, setting aside the impugned order and remand the matter back to the adjudicating authority to re-determine the duty payable on the basis of actual production, in consonance with the earlier directions as referred to herein.

7. Thus, the appeals are allowed by way of remand. The appellant is also directed 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 an opportunity of hearing.

(Dictated in Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
20.1.17
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