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: 29/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71170/2016-SM[BR] dated 23/12/2016

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/51737/2014	BIRLA CORPORATION LTD UNIT-RAEBARELI CEMENT WORKS,AMAVAN ROAD RAEBARELI,U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW,UTTAR PRADESH-226001

Copy To

3 Advocate(s) / Consultant(s):

BIPIN GARG & CO. ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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/51737/2014-EX[SM]

Arising out of Order-in-Appeal No.04-CE/LKO/2013 dated 05.09.2013 passed by Commissioner (Appeals) of Central Excise, Lucknow.

M/s Birla Corporation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant (s)

Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 23.12.2016

FINAL ORDER NO.- 71170/2016

Per Mr. Anil G. Shakkarwar:

This appeal is filed by the appellant, M/s Birla Corporation Ltd., against Order-in-Appeal No,04-CE/LKO/2013 dated 05.09.2013 passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellants were issued with nine periodic show-cause-notices for the period from January, 2010 to October, 2010 denying Cenvat Credit of Service Tax paid on transportation of finished goods from factory to premises of dealer. The demand in all nine show-cause-notices put together was Rs.37,50,302/-. The said show-cause-notices were adjudicated

through Order-in-Original No.111 and 119/ADC/LKO/ST/2011 dated 30.03.2012. The Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, the appellant preferred appeal before the Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) rejected the said appeal through Order-in-Appeal No.04-CE/LKO/2013 dated 05.09.2013. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. Learned counsel has submitted that the issue for period covering November 2010 to October, 2011 was decided in their favour by this Tribunal through Final Order No.70180/2016 dated 29.10.2015.

4. The Ld. DR for the Revenue has agreed that the issue is decided in favour of the appellant through the said Final Order dated 29.10.2015.

5. Having considered the submissions of both the sides, I find that this Tribunal through said Final Order dated 29.10.2015 held as follows:-

> *"I find that the ruling in the case of Ispat Industries Ltd. (supra) relied upon by the Revenue, is of no help as in that case the issue was as to the includibility of cost of transpiration charges from factory gate to the depot which was*
>
> *the place of removal in the transaction value of the goods, under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 under the fact that the assessee had cleared the goods both directly from the factory gate as well as from the depot. I further hold that in the facts of this case, "the place of delivery of goods" is the customer's premises and the freight is borne by the appellant manufacturer. The "place of removal" has to be held at the customer's premises. This position has been clarified by CBEC in the Circular No.ST/137/85/2007-CX-4 dated 23.08.2007. Even after the amendment in the definition of input services with effect from 04.04.2008 replacing the words "from the place of*

removal" by "up to the place of removal", the place of removal gets extended up to the buyer's premises in the case of FOR-destination sales and as such, the said amendment does not make any difference, where the sales are on FOR-destination basis. In the case of destination sale, the ownership and property is transferred when the manufacturer delivered the goods to the buyer at his premises Accordingly, I hold that Cenvat Credit of service tax is available to the appellant on outward transport for sales made to the buyers."

"Thus, the Appeal is allowed. The appellant is entitled to consequential benefits, if any, in accordance with Law."

6. Following the precedent decision of this Tribunal, I allow the appeal and hold that the appellant is entitled to consequential benefits, if any, in accordance with Law.

(Dictated & pronounced in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Mishra

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001