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: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70001-70002/2018-SM[BR]** dated **01/01/2018**

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/988/2011	**Raghu Prime Metal Limited,** Dhaulana Road, Pilakhuwa, Tehsil-hapur Distt. Ghaziabad (u.p.)
2 E/CROSS/157/2011	E/1001/2011	**Commissioner of CUSTOMS-Meerut-ii** OPPOSITE SHAHEED SMARAK, DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH
		Name and Address of Respondent
3		Raghu Prime Metal Ltd., Dhaulana Road, Pilkakuwa Tehsil Hapur, Distt. Ghaziabad (u.p.),,
4		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
Cross Application No. E/ CROSS/157/2011 in
APPEAL No. E/1001/2011 &
APPEAL No. E/988/2011-EX[SM]

(Arising out of Order-in-Appeal Nos. 02-03-CE/MRT-II/2011 dated 19/01/2011 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Meerut-II)

M/s Raghu Prime metal Ltd. (in Appeal No. E/988/2011) &

Commissioner of Customs & Central Excise Meerut-II (in Appeal No. E/1001/2011) **Appellant(s)**

Vs.

Commissioner, Central Excise, Meerut-II &

M/s Raghu Prime Metal Ltd. **Respondent(s)**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant(s)
Shri Gyanendra Kumar Tripathi (Asstt. Commr.)AR for Respondent(s)

CORAM:

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

Date of Hearing : 27/12/2017
Date of Decision : 27/12/2017

FINAL ORDER NOs: 70001-70002/2018

Per: Anil G. Shakkarwar

Above stated two appeals are arising out of common Order-in-Appeal No. 02-03-CE/MRT-II/2011 dated 19.01.2011 passed by Commissioner (Appeals) Customs and Central Excise, Meerut –II. Therefore, these are taken together for decision. Appeal No. E/988/2011 is filed by M/s Raghu Prime Metal Ltd. whereas Appeal No. E/1001/2011 is filed by Revenue.

2. Brief facts of the case are that the manufacturer assessee was engaged in the manufacture of various types of Ingots and Steel Castings classifiable under Chapter 72 of the first schedule to Central Excise Tariff Act, 1985. They were issued with a show cause notice alleging that they had availed inadmissible Cenvat Credit amounting to Rs. 6,26,062/- which was availed on the basis of invoices issued by registered dealer and on visit by officers on 28.08.2008 it appeared to the officers that the said scrap was non-cenvatable. On contest the issue was decided through Order-in-Original dated 21.10.2010 through which said Cenvat Credit was disallowed and equal penalty was imposed. The manufacturer appellant preferred appeal before Commissioner (Appeals) which was decided through impugned Order-in-Appeal. The Ld. Commissioner (Appeals) upheld the confirmation of demand and reduced the penalty to Rs. 2 lakhs. Aggrieved by upholding the confirmation of the demand manufacturer appellant preferred present appeal and aggrieved by reduction in penalty, Revenue preferred present appeal.

3. Heard the learned counsel for manufactuer appellant. Learned counsel submits that scrap was purchased from the registered dealer and they were having duty paying documents i.e., invoices issued by the registered dealer and on the strength of invoices Cenvat Credit was availed. He has submitted that it was presumption of the officers that the said scrap was non-cenvatable and show cause notice issued on the basis of

presumption does not sustain. He has relied on the ruling by Hon'ble High Court of Allahabad in the case of Juhi Alloys Ltd. reported at 2014 (302) E.L.T. 487 (All.). He has submitted that the Hon'ble High Court has held that it is impractical for an assessee to go behind the records maintained by the first stage dealer and also submitted that Hon'ble High Court has held that if the assessee acted with all reasonable diligence in its dealing with the first stage dealer within the meaning of Rule 9(3) of Cenvat Credit Rules, 2004, the responsibility of assessee is discharged.

4. Heard the learned AR who has submitted that the penalty imposed under Section 11 AC cannot be reduced by Appellate Authority.

5. Having considered the rival contention, I find that there is no allegation that the scrap was non-duty paid nor there was any allegation that the inputs were not received factory in the factory. I, therefore, do not find the said show cause notice to be sustainable. I, therefore, relying on the above state ruling by Hon'ble High Court of Allahabad, allow the appeal filed by the appellant assessee and dismiss the appeal filed by Revenue. Cross objection also stands disposed of.

(Dictated and pronounced in Court)

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

Ankit

प्रमाणित प्रति/Certified True Copy
29/01/18
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