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: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70977/2017-EX[DB] dated 28/08/2017

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/1233/2009	HINDALCO INDUSTRIES LTD. RENUKOOT, SONEBHADRA (U.P.)
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1233/2009-EX[DB]

(Arising out of Order-in-Appeal No. 17/CE/ALLD/2009 dated 06/02/2009 passed by Commissioner of Central Excise & Service Tax (Appeals), Allahabad)

M/s Hindalco Industries Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Allahabad	**Respondent**

Appearance:

Shri Atul Gupta, Advocate	for Appellant
Shri Pawan Kumar Singh (Supdt.)AR	for Respondent

<u>CORAM:</u>

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

Date of Hearing	:	28/08/2017
Date of Decision	:	28/08/2017

FINAL ORDER NO. 70977/2017

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in Appeal No. 17/CE/ALLD/2009 dated 06.02.2009 passed by Commissioner of Central Excise and Service Tax (Appeals), Allahabad.

2. Brief facts of case are that the appellant was issued with a show cause notice dated 13.01.2006 by invoking proviso to sub Section (1) of Section 11A of Central Excise Act, 1944 wherein Central Excise Duty amounting to Rs. 22,67,720/-

was demanded for the period from 03.08.2001 to 20.11.2002 on Miscellaneous Aluminium Scrap cleared by the appellant through invoices on which it was stated that it was duty paid used scrap. The issue was adjudicated by confirming the demand through Order-in-Original dated 31.03.2008. Party preferred appeal before Commissioner (Appeals) challenging the said Order-in-Original dated 31.03.2008. The learned Commissioner (Appeals) upheld the said Order-in-Original dated 31.03.2008 and rejected the appeal filed by the appellant through impugned Order-in-Appeal dated 06.02.2009. Aggrieved by the said order the appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. The learned counsel has submitted a copy of demand cum show cause notice issued to appellant bearing show cause notice No. 24/Jt. Commr. Alld./2005 dated 06.07.2005 issued from File No. C.No. VI (MP) Dem(12)Adj-9/2005 which was issued for the period from July, 2000 to December, 2002 wherein it was alleged that the appellant cleared Miscellaneous Aluminium Scrap on the strength of their private invoices and on some invoices they had mentioned "duty paid" but reference to duty payment particulars was not shown. The learned counsel submitted that the present show cause notice was issued on 13.01.2006 to the same assessee covering period from 03.08.2001 to 20.11.2002 whereas show cause notice dated

06.07.2005 also covered the period, covered by present show cause notice. He has further submitted that after the issue of show cause notice dated 06.07.2005 Revenue did not have authority to invoke proviso to sub Section (1) of Section 11A of Central Excise Act, 1944 for issue of show cause notice dated 13.01.2006 since the earlier show cause notice covered the period covered by later show cause notice and in view of the ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory v/s Commissioner of Central Excise, Andhra Pradesh reported at 2006 (197) ELT 465 (SC).

4. Learned AR for Revenue has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of record we find that subject matter in both the show cause notices dated 06.07.2005 and 13.01.2006 is same i.e. demand of Central Excise duty on scrap cleared by the appellant stating that it was a "duty paid used scrap" and period was also covered by earlier show cause notice for which later show cause notice was issued. Therefore, it is apparent that the source of information for both the show cause notices is the same. Therefore, we find that the later show cause notice i.e. 13.01.2006 was not sustainable since the said show cause notice dated 13.01.2006 was issued by invocation of proviso to sub Section (1) of Section 11A of Central Excise Act, 1944, in view of the ruling by Hon'ble

Supreme Court in above stated case of Nizam Sugar Factory. We, therefore, hold that show cause notice dated 13.01.2006 is not sustainable in law. We, therefore, set aside the impugned Order-in-appeal and as a consequence said Order-in-Original dated 31.03.2008 will not survive in law. In above terms we allow the appeal. The appellant shall be entitled for consequential relief as per law.

(Dictated in and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

lak.a

Certified True Copy
27/09/12
Asstt. Registrar
C.E.S.T.A.T.
ALLAHABAD-211001
MARG,ALLAHABAD-211001