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: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71875/2017-EX[DB] dated 01/12/2017

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/1439/2012	**Abhinav Steels And Power Ltd** A-18,a-19,sida, Satharia, Distt-Jaunpur(U.P)
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

Ms. Stuti Saggi
(Advocate)(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, Bhisham Pitamah Marg, Opp ICICI Bank of Defence Colony 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 ALS Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.O.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/1439/2012-EX[DB]
(Arising out of Order-in-Appeal No. 35/CE/ALLD/2012 dated 22/03/2012 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

M/s Abhinav Steels & Power Ltd. Appellant

Vs.

Commissioner of Central Excise, Allahabad Respondent

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR). for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 01/12/2017

FINAL ORDER NO. 71137/2017

Per: Archana Wadhwa

After hearing both the sides, we find that the demands has been confirmed in respect of their final product and Cenvat credit stands denied to them in respect of the inputs, which were found short by the Officers during the course of their visit to appellant's factory on 29/01/2011, when the stock taking was undertaken by them. The said order stands passed on the allegations and findings of clandestine removal.

2. Apart from the contesting that the stock taking was not properly undertaken by the visiting Officers, thus leading to pseudo shortages, it stands submitted before us that in the absence of any other evidence on record the findings of clandestine removal cannot be upheld on the basis of shortages itself.

3. We note that the issue has come up repeatedly before the Tribunal and it stands held by various decisions that such shortages cannot lead to the conclusion of removal of goods without payment of duty. Reference can be made to the Tribunal decision in the case of Kumar Industries *Versus* Commissioner of Central Excise, Lucknow reported at 2016 (340) E.L.T. 549 (Tri. – Allahabad). In fact the issue stands decided by the Jurisdictional Hon'ble Allahabad High Court in the case of Commissioner *Versus* Meenakshi Castings reported at 2011 (274) E.L.T 180 (Allahabad) laying down that shortages detected at the time of visit of Officers cannot lead to the allegations of clandestine removal in the absence of any evidence to the contrary.

4. In as much as, in the present case apart from the shortages, Revenue has not referred to any other evidence on record indicating the clandestine removal, we find that no justifiable reasons to uphold the impugned order. Accordingly the same is set aside and appeal is allowed with consequential relief to the appellant.

(Dictated & Pronounced in Court)

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

Sd/-
(Archana Wadhawa)
Member (Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
25/01/18
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