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/70028/2018-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/70009/2016	**India Casting Company** D-42,foundry Nagar AGRA UP
		Name and Address of Respondent
2		C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002

Copy To

3Advocate(s) / Consultant(s):

A.K.JAIN CONSULTANT
(RETIRED SUPERINTENDENT)
R/O 69-B, TAGORE NAGAR,
DAYAL BAGH, AGRA (U.P.)

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, 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 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/70009/2016-EX[SM]

(Arising out of Order-in-Appeal No. 299/CE/APPL-AGRA/LKO/2015 dated 05/08/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s India Casting Company — **Appellant**

Vs.

Commissioner of Central Excise, Agra — **Respondent**

Appearance:

Shri A. K. Jain, (Consultant), for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 10/11/2017

FINAL ORDER NO. 70028/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 299/CE/APPL-AGRA/LKO/2015 dated 05/08/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were registered with Central Excise Department and they were availing facility of Cenvat credit. On the strength of Invoice No. 1195 dated 12/11/2010 appellant have taken Cenvat credit of Rs.33,781/- on inputs, Iron & Steel Scrap. The Inputs of Iron & Steel Scrap were received by them from

Second Stage Dealer – M/s Shanker Traders, Faridabad. Central Excise Officers carried out investigations in respect of M/s Isha Enterprises. Shri Gulshan Bhatia associated with M/s Isha Enterprises stated before the Central Excise Officers that M/s Isha Enterprises never supplied material to M/s Shanker Traders. The invoices issued by M/s Shanker Traders had information that M/s Isha Enterprises was the First Stage Dealer in respect of the goods covered by said invoices. The Central Excise Officers recorded the statement under Section 14 of the Central Excise Act, 1944 of appellant who stated that they received the goods along with said invoices and they also produced payment details of having payment received by M/s Shanker Traders. Therefore, the appellants were issued with a Show Cause Notice dated 20/04/2012 stating that M/s Isha Enterprises was associated with M/s Shanker Traders. It was alleged that the appellant did not receive the goods but have taken Cenvat credit on the strength of invoices without receipt of goods. Therefore, there was a proposal to reverse Cenvat credit amounting to Rs.33,781/-. The said Show Cause Notice was adjudicated through Order-in-Original No. 110-CE/Adj/AC/Agra/2014 dated 17/07/2014, wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the issue through impugned Order-in-

Appeal dated 05/08/2015, wherein ld. Commissioner (Appeals) upheld the Order-in-Original dated 17/07/2014. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3. Heard both the parties and perused the record.

4. Having considered the rival contentions and on perusal of the facts on record, I find that the Central Excise Officers did not carry out any investigation at the end of M/s Shanker Traders. Further the appellant stated in their statement, recorded under Section 14 of the Central Excise Act, 1944, that they had taken Cenvat credit on the strength of invoices through which inputs were received by them and also produced the details of payments made by them to M/s Shanker Traders. Therefore, it is not conclusively established that the appellant did not receive the inputs. I, therefore, hold that the said Show Cause Notice dated 20/04/2012 is not sustainable. Therefore, I set aside the impugned Order-in-Appeal dated 05/08/2015 and allow the appeal. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy

01/02/18

सहायक पंजीकार/Asstt. Registrar

(C.E.S.T.A.T.)

38, M. G. MARG, ALLAHABAD-211001