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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71782/2017-SM[BR] dated 17/11/2017

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/70177/2016	**Prahlad Steels Pvt Ltd** Etawah Road,shikohabad FIROZABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.E/70177/2016-EX[SM]

(Arising out of Order-in-Appeal No.448-449-CE/APPL-AGRA/LKO/2015 dated 19/11/2015 passed by Commissioner(Appeals), & Customs, Central Excise & Service Tax, Lucknow)

M/s Prahlad Steels Pvt. Ltd.	**Appellant**
Vs.	
C.C.E. & S.T.- Lucknow	**Respondent**

Appearance:

Shri P.K. Mathur (Representative)	for Appellant
Mohd. Altaf, (AC) AR	for Respondent

CORAM:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial)

Date of Hearing : 17/11/2017
Date of Pronouncement : 22/11/2017

Final Order No.-71782/2017

Per: Mrs. Archana Wadhwa:

The challenge in the present appeals is to imposition of Rs.2,55,782/- imposed upon the appellant in terms of the provisions of Section 11 AC of the Act.

2. After hearing the learned representative of the appellant as also the learned AR for the Renenue and after going through the impugned orders I find that the appellant is engaged in

manufacture of M/s Ingots. As a result of visit of the officers in the appellant's factory and stock taking of the finished products also the raw materials, certain shortages were detected. The appellant's representative admitted the said shortages and also deposited the duty in respect of the same.

3. On the above basis, proceedings were initiated alleging clandestine removal and proposing imposition of penalty. The appellant did not contest the confirmation of demand but pleaded that no penalty should be imposed inasmuch as shortages cannot be held to have been clandestinely removal without payment of duty.

4. The lower authorities did not find favour with the above contention of the appellant and imposed penalty which is the subject matter of present appeal.

5. Tribunal in the case of Galaxy Textile Vs. Commissioner of Central Excise, Vapi : 2011 (263) E.L.T. 604 (Tri. Ahmedabad) has observed that though the appellant had admitted shortages and have agreed to pay the duty thereon so as to avoid litigation but in the absence of any evidence to corroborate the allegations of clandestine removal, penalty is not imposable. Further, I note, no investigation has been made by the Revenue trying to find out the evidence as regards raw materials received by the assessee, manufacture of their final product, transportation of the same and identification of the buyers. It is settled that the findings of clandestine removal are required to be based on the positive

and tangible evidence and cannot be upheld on the basis of assumption and presumption. Reliance in this regard is made to the decision of the Hon'ble High Court of Allahabad in the case of Commissioner of Central Excise, Kanpur Vs. Minakshi Castings : 2011 (274) ELT 180 (All.) laying down that the shortages of finished goods without any evidence of clandestine removal, cannot lead to inference of evasion of duty.

6. In view of the above, I set aside the penalty imposed upon the appellant. However, duty and interest stands confirmed as not contested. Appeal is allowed in above terms.

(Pronounced on the open Court on ......29/11/17)

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS

प्रमाणित प्रति/Certified True Copy
04/01/18
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