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: 10/04/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70723/2018-SM[BR] dated 20/03/2018

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/1847/2011	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
		Name and Address of Respondent
2		Bhushan Steels Limited, 23 Site-iv, Sahibabad Industrial Area, Ghaziabad.(U.P.)

Copy To

3Advocate(s) / Consultant(s):

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

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. I

APPEAL No. E/1847/2011-EX[SM]

(Arising out of Order-in-Appeal No. 28-CE/GZB/2011-12 dated 15/04/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

M/s Bhushan Steels Limited **Respondent**

Appearance:

Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Appellant
Shri Rajesh Chhibber, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 20/03/2018

FINAL ORDER NO. 70723/2018........

Per: Anil Choudhary

The present appeal has been filed by Revenue challenging the order of Appellate Authority.

2. The brief facts of the case are that the respondent-assessee is engaged in manufacture of C.R. Coils/Sheets falling under Chapter 72.09 of Central Excise Tariff Act, 1985. Their raw material is H. R. Coil, on which they claimed credit. After cutting/slitting the H. R. Coils, the respondent-assessee was clearing the waste and scrap paying the duty on transaction value, whereas Revenue has demanded reversal of Credit by treating the removal of said

waste and scrap (H. R. Side Slitting, H. R. End Cuttings, Side trimming, etc.) as removal of input as such. The matter reached upto Hon'ble Supreme Court in appellant's own case, wherein it was held in Para 2 of judgment reported at 2010 (257) E.L.T. 5 (S.C.) is reproduced below:-

> "The point involved in these two sets of appeals being the same, are being disposed of by a common order, as had been done by the Tribunal. For the sake of convenience, the appellant and the respondent are hereinafter referred to as "the Revenue" and "the assessee" respectively. The instant appeals pertain to the correct classification of side offcuts of H. R. Coils which the assessee sought to classify as "waste and scrap" under Tariff Entry 72.04 while the Revenue sought their classification as "flat-rolled products" under Tariff Entries 72.08, 72.09 & 72.11.

3. Hon'ble Supreme Court, after following its earlier judgment in the case of LMC held that said end cutting/side cutting would be classified under appropriate tariff heading. As a result of which the stand of assessee as scrap and stand of Revenue as removal of inputs as such, was not agreed with.

4. The respondent has drawn attention towards OIO No.17-19/Com./GZB/2009 dated 07/08/2009 whereby the jurisdictional Commissioner dropped three Show Cause Notices pending with him, on similar issue.

5. In the instant case the Joint Commissioner confirmed the demand raised on same issue. She did not follow the judgment of Hon'ble Supreme Court on the basis of a judgment of Hon'ble Delhi High Court in the case of Faridabad Iron & Steel Traders Association *Versus* Union of India, reported at 204 (178) E.L.T. 1099 (Delhi), wherein Adjudicating Authority in Para 5 also took note of OIO dated 07/08/2009 dropping the pending Show Cause Notices. The Appellate Authority allowed the appeal filed before it by following the judgment of Apex Court.

6. In grounds of appeal the Department has stressed upon the judgment of Hon'ble Delhi High Court in the case of Faridabad Iron & Steel Traders Association (supra) which was passed prior to 2005, whereas judgment on same issue in the case of same party was passed by the Apex Court in 2006.

7. From the facts on record not disputed that, facts of present appeal are identical to the judgment of Apex Court (supra).

8. Hence, respectfully following the judgment of Apex Court (supra) I reject the appeal filed by the Revenue with consequential relief to the respondent.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy

11/04/18

सहायक रजिस्ट्रार/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