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: 21/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70341-70342/2018-EX[DB] dated 06/02/2018

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/2644/2005	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
2	E/2645/2005	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
		Name and Address of Respondent
3		Devson Steels Ltd. C-15,B.S.Road Industrial Area Ghaziabad-U.P
4		Rakesh Gupta Md M/s Devson Steels Ltd,C-15, B.S Road, Industrial Area,, ,GHAZIABADU.P

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ATUL GUPTA, (ADVOCATES)
ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos. E/2644 & 2645/2005-EX[DB]

(Arising out of Order-in-Appeal No. 59-60-CE/GZB/2005 dated 09/05/2005 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

Commissioner, Central Excise, Ghaziabad **Appellant(s)**

Vs.

M/s Devson Steels Ltd. (in Appeal No. E/2644/2005) &

Shri Rakesh Gupta (in Appeal No. E/2645/2005) **Respondent(s)**

<u>Appearance:</u>

Shri Pradeep Kumar Dubey (Supdt) AR for Appellant(s)
Shri Atul Gupta (Advocate) & Shri Harishikesh (Advocate) for Respondent(s)

<u>CORAM:</u>

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

Date of Hearing : 06/12/2017
Date of Decision : 06/12/2017

FINAL ORDER NOs. 70341-70342/2018

Per: Anil G. Shakkarwar

Present appeals are directed against Order-in-Appeal No.59-60-CE/GZB/05 dated 09.05.2005 passed by Commissioner (Appeals) Central Excise and Customs, Ghaziabad. Appeals are filed by Revenue. Since both the appeals are arising out of common order, they are taken together for decision.

2. Brief facts of the case are that the respondent were engaged in manufacture of Storage tanks and Garbage Bins and were paying concessional rate of duty vide Notification No. 1/93 dated 01.03.1993. Investigation were carried out against the respondent and a show cause notice dated16.03.2000 was issued. Through the said show cause notice respondents were called to show cause as to why the Central Excise duty amounting Rs.13,99,577/- should not be demanded. On contest the issue was adjudicated through Order-in-Original dated 29.06.2001. The Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) decided the appeal through Order-in-Appeal dated 12.04.2004 wherein the Commissioner (Appeals) has held that the allegations in the show cause notice were not sustainable. Therefore, the demand of duty and penalty were not sustainable and also personal penalty on the other appellant was not sustainable. Therefore, he allowed the appeals. Aggrieved by the said order, Revenue preferred appeal before this Tribunal. This Tribunal decided the appeal by passing Final Order No. 341-342/05 dated 04.03.2005. This Tribunal held that the Learned Commissioner (Appeals) did not give any finding in respect of clandestine removal and consequent penalty, therefore, the matter was remanded on said issue only. In compliance of remand proceedings

Commissioner (Appeals) passed the impugned Order-in-Appeal dated 09.05.2005, wherein he stated that in his Order-in-Appeal dated 12.04.2004 the findings of goods cleared without payment of duty had appeared on page six, wherein he had dealt with the demand of duty proposed on the grounds with certain quantity of goods were cleared without payment of duty on the basis of entries in outgoing register whereas the entries in respect of the said goods was not mentioned in the statutory record and that the ~~same~~ said quantity of goods involved Central Excise Duty of Rs. 5,28,738/- and held that the demand raised on the basis of register maintained by gate keeper is not sustainable. The demand of duty and penalty on account of said issue involving demand of Central Excise duty of Rs.5,28,738/- was held to be unsustainable by Learned Commissioner (Appeals) through impugned Order-in-Appeal. Aggrieved by the said order Revenue has filed the present appeal.

3. The ground of appeal only relates to entry into gate register. Further, in Page 10 of the appeal memorandum in form EA-3 appellant commissioner has prayed to set aside the impugned Order-in-Appeal to the extent demand of duty of Rs. 5,28,738/- .

4. Heard, the parties and perused the records We find that issue is covered by the Litigation Policy of CBEC communicated through letter dated 17.08.2011 as amended.

We therefore, dismiss both the appeals filed by Revenue. The respondents shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

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

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

Ankit

05/03/18

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