FAX : 0532-2400192

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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70981-70982/2016-SM[BR] dated 30/09/2016

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/51866/2015	**PEE CEE COSMA SOPE LTD** A-655, VILLAGE ARTONI, AGRA-MATHURA ROAD AGRA,UP
2	E/51867/2015	**MAHENDRA KUMAR JAIN** **THE DIRECTOR** PEE CEE COSMA SOPE LTD A-655, VILLAGE ARTONI AGRA-MATHURA ROAD AGRA,UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

R K HASIJA
GST TAXPERTS, SCO #41, FF,
SWASTIK VIHAR, SECTOR-5,
MDC, PANCHKULA-134112
(HARYANA)

5 Bar Association, CESTAT, Allahabad

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

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

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

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

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

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

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

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

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

Date of Hearing & Date of Decision : 30/09/2016

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

APPEAL Nos. E/51866, 51867/2015-EX[SM]

(Arising out of Order-in-Appeal No. 50-51/CE/APPL-AGRA/LKO/2015 dated 19/02/2015 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Pee Cee Sope Ltd., Mahendra Kumar Jain The Director

Appellant

Vs.

Commissioner of Central Excise & Service Tax, Lucknow

Respondent

Appearance:

Shri R.K. Hasija, Advocate, for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 30/09/2016

FINAL ORDER NO. 70981-70982/2016

Per: Anil G. Shakkarwar

The present two appeals are arising out of common Order-in-Appeal No. 50-51/CE/APPL-AGRA/LKO/2015 dated 19/02/2015 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The brief facts of the case are that the appellants are manufacturers of Soap & Detergent. Revenue conducted investigation in respect of M/s Shree Ganesh Chem-Oils & M/s Shiva Traders, Ludhiana. On the basis of statements recorded in the said investigation, they visited the factory of the appellants on 09-11-2010 and drawn Panchnama. The Panchnama is available at page No. 368 to 371 of Appeal Paper Book. The Panchnama states that the stock of raw material on which Cenvat credit was availed tallied with the record. The Panchnama also states that the officers took samples of 100 gm. each of palm fatty acid, other fatty acid and rice bran oil. Without making any reference to said samples but on the basis of statements recorded in respect of suppliers of inputs Show Cause Notice was issued to the appellant contending that the goods stated in the invoices were diverted to Himachal Pradesh and some other substitue goods were supplied to the appellant and on the basis of such invoices appellant availed Cenvat credit. The Show Cause Notice dated 07-02-2012, proposed to disallow Cenvat credit

of Rs.15,38,549/- availed for the period from 2007-08 to 2010-11. The Order-in-Original No. 9/ADC/CE/2013 dated 26-03-2013 confirmed the demand, imposed penalty and personal penalty was imposed on Shri Mahendra Kumar Jain, Director. Being aggrieved the appellant preferred appeal before Commissioner (Appeals) which was decided through impugned Order-in-Appeal No. 50-51/CE/APPL-AGRA/LKO/2015 dated 19/02/2015 wherein appeal was rejected. Aggrieved by the said Order-in-Appeal No. 50-51/CE/APPL-AGRA/LKO/2015 dated 19/02/2015 the appellants are before this Tribunal.

3. The ld. Counsel for the appellant has contended that though the samples were drawn, the Test Report was not provided by the Revenue. Further, drawl of sample was not stated in the Show Cause Notice & Test Report was not taken into consideration for issue of Show Cause Notice. The Show Cause Notice was issued only on the basis of statement recorded in respect of third party. The ld. D.R. has supported both impugned Order-in-Original & Order-in-Appeal.

4. I have examined the Show Cause Notice. It is a matter of serious concern that though the samples were drawn, the drawl sample was not mentioned in the Show Cause Notice. The Test Report were not relied upon and Show Cause Notice was based on the presumption. Therefore, Show Cause Notice is not sustainable. I, Therefore, set aside both impugned Order-in-Original & Order-in-Appeal and allow the both

appeals. The appellants shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy

26.10.16

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