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: 28/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70719-70720/2016-SM[BR] dated 10/03/2016

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/60579/2013	**RAMASHANKAR LAKSHMI NARAYAN AND BROS** D-59/376-2 MADHOPUR,SHIVPURWA VARANASI, UTTAR PRADESH
2	E/60580/2013	**BIHARI LAL** APPLATE NO-2,PARTNER M/S RAMASHANKAR LAKSHM NARAYAN AND BROS D-59/376-2 MADHOPUR,SHIVPURWA VARANASI,U.P
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

BIPIN GARG
B-1/1289, A - VASANT KUNJ,
NEW DELHI

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

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/60579/2013 AND E/60580/2013 (SM)

[Arising out of Order-in-Appeal No. 34 & 35/CE/ALLD/2013 dated 24/9/2013 passed by Commissioner (Appeals), Central Excise, Allahabad]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

1. M/s Ramashankar Lakshmi Naryana and Brothers. **Appellant**
2. Bihari Lal Yadav, Partner

Vs.

CCE & ST, Allahabad **Respondent**

Appearance:

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Shri Rajeev Ranjan, Joint Commissioner (AR)

Coram: Hon'ble Shri Anil Choudhary, Judicial Member

Date of Hearing/Decision: 10/03/2016

Final order No. 70719-70720/2016

Per: Anil Choudhary

The appellants are in appeal against Order-in-Appeal dated 24/9/13 passed by the Commissioner (Appeals) Customs Central Excise & S. Tax, Allahabad.

2. The brief facts are that the appellants Rama Shankar Lakshmi Naryana & Brothers are engaged in the manufactures of Flavoured/Branded Chewing Tobacco and the other appellant Bihari Lal Yadav is the one of the partners. A search was conducted by DGCEI in the premises of the appellant and in the course of search, following investigation was made in the Railway Parcel Booking Office at Varanasi Cantt Railway Station among other places. In the course of search at the Parcel Office of the Railway, Revenue found consignment of Branded Flavoured Chewing Tobacco, manufactured by appellants, hundred cartons each containing 300 Pcs. of 50 gms. Tin container with MRP Rs. 48/- valued at Rs.14,40,000/- were in name of the appellant was mentioned as manufacturer. The Railway Authority was informed that the said packets had arrived in the morning and the same were in the custody of Railway as booking formality were yet to be initiated and they had not received the manifest from the parties/assessee. It was found that the said goods were and not covered, under proper Central Excise invoice/documents therefore, on the reasonable belief that the said goods were cleared clandestinely without issuance of any valid invoice/bills, and payment of duty the aforementioned cartons of chewing tobacco were seized under Panchnama from the Railway Parcel Office on 21.9.2011. Further, fact that the appellants accepted that the goods had been cleared from their factory without payment of duty and admitted their lapse and immediately deposited Rs.10 lakhs by cheque on 21/9/2011 and further deposited Rs.10 lakhs by cheque on 26/9/11. The said goods were provisionally released to the appellants by the Assistant

Commissioner, Varanasi vide letter dated 20/12/2011 with the direction that the goods released are duly accounted for by the appellant in their delay stock account and cleared on payment of appropriate duty complying with the procedure prescribed under Central Excise Rules. The appellant in compliance submitted relevant page of stock account wherein the provisionally released goods had been accounted for in the manufacture column of the register on 27/12/2011, and the said quantity was shown to have been cleared under Tax Invoice Number 65 dated 12/1/2012, 66 dated 19/1/2012 and 67 dated 23/1/2012.

3. Show cause notice dated 15/3/2012 was issued for adjudicating duty on the said goods detained on 21/9/2011 and subsequently release and cleared amounting to Rs.5,07,255/- with the further proposal to demand interest with the proposal to confiscate the goods under Rule 25 of Central Excise Rule 2002 and further penalty was proposed under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of the Act. The SCN was adjudicated on contest and the duty proposed was confirmed along with equal amount of penalty under Rule 25 read with section 11 AC further, the goods were ordered to be confiscated valued at Rs.14,40,000/- seized from the Parcel Office on 21.9.2011 with option to redeem by paying redemption fine of Rs.5,00,000/-(five lakhs). On the other appellant, Bihari Lal Yadav, a penalty of Rs.1,00,000/-(One lakh) was imposed under Rule 26 of Central Excise Rules 2002 being aggrieved the appellant preferred appeal before Commissioner (Appeals) who was pleased to reject the appeal is

relying on the Ruling of Hon'ble Supreme Court in the case of Western components Ltd Vs. CCE 115 E.L.T. 278, wherein it was held that even if the goods are released under Bond goods can be confiscated and redemption fine can be imposed. Being aggrieved the appellant is in appeal before this Tribunal.

4. The ld. Counsel for the appellant states that the show cause notices have been issued against the provisions of law and the scheme of the act. He has taken me through Sub Section 5,6,7 and 10 of Section 11 A as substituted with effect from 8/4/2011 by the Finance Act 2011. For reference, the Sub Sections are quoted below. He further states that a simplified procedure have been prescribed wherein the course any audit or investigation or verification it is found that the duty has not been paid for any reasons mentioned in clause A to E of sub-section 4 of Section 11 then as per sub- section 6 the person chargeable under sub-section 5 to duty may before service of show cause notice on him pay the duty in full or in part as may be accepted by him along with the interest payable thereon and penalty equal to 1% per month to be calculated from the month following the month in which such a duty was payable not exceeding the maximum of 25% of the duty and informed the Central Excise Officer of such payment in writing. Further, sub-section 7 provides that on receipt of such information the Central Excise Officer shall not serve any notice in respect of the amount so paid and all proceedings in respect to the said duty shall be deemed to be concluded where it is found that duty,

interest and penalty as provided under sub-section 6 has been fully paid.

5. Ld. Counsel further states that it is evident from the Order-in-Original and Order-in-Appeal that the assessee had given intimation to the Central Excise Officer of having accepted their liability and payment of duty. Further the amount of duty calculated by Revenue is only Rs.5,07,255/- where as the appellant had paid Rs. 20,00,000/- (Twenty lakhs) in advance in September, 2011 and had debited the duty on the date of clearance being 12.1.2012 to 23.1.2012 and hence there was no question of interest and at Bank penalty for one month @ 1% is chargeable. Accordingly prays for setting aside the impugned order as the very issue of show cause notice is bad under the scheme of the Act.

6. The learned AR for Revenue relies on the impugned order. The learned AR further states that clandestine removal is established on the part of the appellants and as such show cause notice was rightly issued under Section 11 A and consequential penalty and confiscation are justified.

7. Having considered the rival contentions, I find that by way of substitution of Section 11 A in the Central Excise Act, 1944 with effect from 8/4/2011 is simply a simplified procedure have been prescribed where the assessee admits before and pays the duty with interest and penalty as applicable as provided in sub-section 6 of Section 11 A and gives intimation to the Central Excise Officer. In view of the admitted facts that the appellant have admitted their

liability and have paid the required duty as required in sub-section 6 and intimated the Central Excise Officer under as required under Sub-Section 7 accordingly as provided in sub-section 7 no show cause notice was required to be served. Accordingly, I hold the show cause notice issued with bad and against the provision of Section 11 A of the Act. Accordingly, the appeal is allowed and the impugned order is set aside. Further, fact is that the cheques were written by the Revenue to the appellant on deposit of Rs.10,00,000/- (Ten Lakhs) in cash on 16/12/2011 and further Rs.10,00,000/- (Ten Lakhs) in cash on 24/1/2012 vide JR Challan's. Thereafter the goods were provisionally released on 27/12/11. I have further direct the Adjudicating Authority to calculate interest and penalty if any payable under section 11(6) of the Act and intimate the appellant for payment and/or adjust the said amount from any refund to which the appellant may be found entitled to. Thus, the appeal is allowed with consequential benefits.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
23.9
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