REGISTERED / AD

FAX : 0532-2400149

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

Dated: 08/08/2016

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

Final Order No. A/70613/2016-EX[DB] dated 05/07/2016

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/Stay/1550/2007	E/1924/2007	CCE LUCKNOW 7-A, Ashok Marg, Lucknow.
			Name and Address of Respondent
2			J.M. AGARWAL TOBACCO CO. KAIMGANJ , FARRUKHABAD,, ,

Copy To
3Advocate(s) / Consultant(s):

KAPIL VAISH
2ND FLOOR, PART-A KRISHNA JANKI
PALACE, 35-C, RAMPUR GARDEN,
CIVIL LINES, BAREILLY, UP

4 Additional Party's Name & Address :

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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.1924/07

Arising out of O/A No.14 & 15-CE/2007 dated 23.02.2007 passed by Commr. (Appeals) of Central Excise, Customs & S. Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Commissioner of Central Excise, Lucknow ...APPELLANT(S)

VERSUS

M/s J. M. Agarwal Tobacco Company RESPONDENT (S)

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department
Shri Kapil Vaish, C. A., for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 05.07.2016

Final ORDER NO. 70613/2016

Per Mr. Anil Choudhary :

The revenue is in appeal against order in appeal passed by the Commissioner (Appeals) Customs and Central Excise, Lucknow wherein it has been held that the respondent assessee is not liable to pay additional duty of Excise imposed vide clause 85 of Finance Act, 2005 on the pre-budget stock lying as on 28/2/2005.

2. The issue in this appeal is whether the respondent assessee engaged in the manufacture of chewing tobacco, is liable to pay additional duty of Excise imposed vide Finance Act, 2005 with effect from 1/3/2005 (effective from midnight on the night between 28 February and 1 March 2005).

3. Heard the parties.

4. We find that the issue in this appeal is similar to the issue decided by Honourable Supreme Court in Collector of Central Excise, Hyderabad Vs. Vazir Sultan Tobacco Company Ltd. reported at 1996 (83) ELT 3 (S.C.). The Honourable Supreme Court have held that where the new levy is imposed, the same is not applicable on the goods manufactured prior to imposition of Levy but cleared thereafter and collection of duty at the stage of removal is for the sake of convenience. Once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be collected at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. Referring to Section 3 of the Central Excise that the words "in such manner as may be prescribed" and further collection of duty is left to the Rules as

prescribed. It is evident that the words "in such manner as may be prescribed" qualified the words ""collected" and not the word "levied". We hold that the facts of this case is squarely covered on all four by the aforementioned Ruling of the Apex Court. Accordingly, the appeal of revenue is dismissed. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law.

(Pronounced in the open Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
30/8
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