FAX : 0532-2400187

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

Dated: 30/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70919/2016-SM[BR] dated 16/09/2016

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/COD/70415/2016	E/70786/2016	GODFREY PHILLIPS INDIA LIMITED VISHNU GUPTA, B-19, MEERUT ROAD SITE-3, INDUSTRIAL AREA, GHAZIABAD,UP
		Name and Address of Respondent
2		C.C.E. & S.T.-GHAZIABAD 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3 Advocate(s) / Consultant(s): SH ANSHUL JAIN,CA
C/O PARTY

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, 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 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

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

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

COD Application No.E/COD/70415/2016
IN
Appeal No.E/70786/2016-[SM]

Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-0239-15-16 dated 07.01.2016 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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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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M/s Godfrey Phillips India Ltd.

...APPELLANT(S)

VERSUS

C.C.E. & S. Tax, Ghaziabad

...RESPONDENT (S)

APPEARANCE

Shri Anshul Jain, CA for the Appellant (s)
Shri M.P. Damle Asstt. Commissioner (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 16.09.2016

FINAL ORDER NO.- 70919/2016

Per Mr. Anil Choudhary :

The appellant, M/s Godfrey Phillips India Ltd., is in appeal against Order-in-Appeal No.GZB-EXCUS-000-APP-0239-15-16 dated 07.01.2016 passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellant, M/s Godfrey Phillips India Ltd., is a manufacturer of Pan Masala falling under Chapter Sub-heading No.2106 90 20, had filed a declaration in Form-I under the provisions of Rule 6(6) of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 in the Office of the Assistant Commissioner, Central Excise Division-I, Ghaziabad for re-determination of their Production Capacity in terms of proviso 1 and 2 to Section 3(A)(2) of the Central Excise Act, 1944 read with Rule 6(2) of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.

3. Heard on C.O.D. application. As the appeal was filed within ninety days i.e. within the prescribed time, but due to defect memo issued, was registered later on, the delay being circumstantial is condoned. With the consent of both sides, the appeal is taken up for final disposal.

4. Heard the parties on merits.

5. The grievance of the appellant is that under Rule 6(2) of the said Rules, the Assistant Commissioner was required to make such enquiry as may be necessary, including physical verification, approve the declaration including that of the maximum packing speed at which each of the packing machines available in his factory

can be operated for packing of notified goods of various retail sale prices and determine~~d~~ and passed order, concerning annual capacity of production of the factory in accordance with the provisions of the Rules. But, the Assistant Commissioner have exceeded the jurisdiction and after fixing the production capacity of the packing machines have erred in determining that duty payable for the Month of March, 2015. Accordingly, he is seeking quashing of the part of the impugned order, determining the duty payable.

6. Having carefully considered the rival contentions, I am satisfied that the Assistant Commissioner was required to only determine the annual capacity of production and have exceeded jurisdiction in determining th~~at~~e duty payable per month. Accordingly, the later part of the impugned order determining that duty payable for the month of March, 2015 is quashed and ~~not~~ set aside. Thus, the appeal is allowed.

(Dictated & Pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
25.10.16
[illegible] / Asstt. Registrar
[illegible]
(C.E.S.T.A.T.)
[illegible]-211001
35, M. G. MARG, ALLAHABAD-211001