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: 05/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70931-70932/2016-EX[DB] dated 29/09/2016

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/2295/2009	DHARAMPAL SATYAPAL LTD. B-1, SECTOR-3, NOIDA.
2	E/2296/2009	MR. PUESH KUMAR, DIRECTOR OF M/S DHARAMPAL SATYAPAL LTD. , B-1, SECTOR-3, NOIDA.
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

T. R. Rustagi,Advocate
SD-84, TOWER APARTMENTS,
PITAMPURA, DELHI
110034

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
mann 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

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

Appeal No.E/2295 & 2296/2009-EX[DB]

Arising out of Order-in-Appeal Nos.107 to 109-CE/NOIDA/2009 dated 27.04.2009 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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 Dharmpal Satyapal Ltd
Mr. Puesh Kumar, Director of

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida

...RESPONDENT (S)

APPEARANCE:

Shri T.R. Rustogi, Advocates for the Appellant (s)
Shri Kamal Puggal Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING : 15.06.2016

DATE OF PRONOUNCEMENT : 29/09/2016

FINAL ORDER NO.- 70931-70932/2016

Per Mr. Anil G. Shakkarwar:

The present two appeals are preferred against Order-in-Appeal Nos.107 to 109-CE/NOIDA/2009 dated 27.04.2009 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

2. The brief facts of the case are that the appellants, M/s Dharampal Satyapal Ltd., are manufacture of branded Pan Masala. They received unbranded Pan Masala in bulk from their own unit situated at Gauwhati and packed them in unit packs. The unbranded Pan Masala attracts basic Excise Duty, Special Duty, National Calamity Contingent Duty (NCCD), Additional Duty of Excise and Cess. Notification No.32/99-CE dated 08.07.1999, provides for refund of Basic Excise Duty, Special Excise Duty and Additional Excise Duty paid through current account in respect of units in Assam. Notification No.27/2001 dated 11.05.2001 provides for exemption in respect of NCCD paid through Account Current by the units located in North East, including Assam. Rule 12 of Cenvat Credit Rule has provided that though the duty paid through Current Account is exempted through Notification No.32/99-CE still the Cenvat Credit of duty paid on input shall be admissible as if there has been no refund of duty paid through Account Current. There is no such mention regarding Notification No.27/2001 dated 11.05.2001 in the said Rule 12 of Cenvat Credit Rules, 2004. During the period from 27.06.2002 to 07.01.2006, appellant took Cenvat Credit of Rs.44,48,950/- of NCCD paid on unbranded Pan

Masala manufactured by their own unit situation at Guwahati in respect of which refund of the entire amount was allowed to their Guwahati unit. It appeared to Revenue that since there is no mention of said Notification No.27/2001 in said Rule 12, under Rule 3 of Cenvat Credit Rules of NCCD initially paid and subsequently refunded in terms of Notification No.27/2001 was not admissible to appellant. Therefore, a show cause notice dated 02.04.2007 was issued to appellants calling upon them to show-cause-notice as to why Cenvat Credit of Rs.44,48,950/- of NCCD availed by them should not be recovered and the amount of Rs.43,97,134/- already paid by them, should not be appropriated. The show cause notice also had proposal for interest and penalty. The said show cause notice also had proposal for imposition of personal penalty on Shri Puesh Kumar and Shri. V. Santosh Kumar. The appellant contended before Original Authority that Rule 3 of Cenvat Credit Rule allows credit of duty paid on inputs and there is no dispute that said NCCD was paid on inputs and there is no prohibition in the Rules for taking Credit of such NCCD paid. Rule 12 of Cenvat Credit Rules allows Cenvat Credit, which is refund through said Notification No.32/99-CEm, but the same is only clarificatory in nature. They further contended that non-mention of Notification No.27/2001 in said Rule 12 would not lead to an interpretation that Cenvat Credit already paid is not admissible to them. The Original Authority could not appreciate the grounds. The original Authority has decided the show cause notice through Order-in-Original No.06/Addl. Commissioner/08 dated 29.02.2008, wherein Cenvat Credit of Rs.44,48,950/- was disallowed, Rs.43,97,134/- was appropriated, equal amount of penalty was imposed and appellants were directed to pay interest. Further, a personal penalty of Rs.5 lakh each, was imposed on Puesh Kumar and Shri V. Santosh Kumar.

3. The appellants preferred appeal before Ld. Commissioner (Appeals), who decided the appeal through Order-in-Appeal No.107 to 109-CE/Noida/2009 dated 27.04.2009. The appellant raised the same grounds before Appellate Authority. The Ld. Commissioner (Appeals) modified the original Order by quashing the personal penalty on Shri V. Santosh Kumar and reducing the personal penalty to Rs.3 lakh on Shri Puesh Kumar.

4. Being aggrieved by the said Order-in-Appeal dated ~~29~~ 27.04.2009, M/s Dharampal Satyapal Ltd. and Shri Puesh Kumar preferred appeals before this Tribunal.

5. Heard the Ld. Counsel. The contention of learned counsel is that Rule 3 of Cenvat Credit Rules, 2004 provides for credit of duty paid on inputs. There is no dispute that said NCCD was paid on the inputs and credit of said NCCD paid on inputs was taken by the appellant. There is no prohibition in the said Rule that duty paid, if subsequently refund by any other provision, is not admissible as Cenvat Credit. Non-mention of Notification No.27/2001 in Rule 12

of Cenvat Credit Rules, 2004 does not make the appellants disentitled for said Cenvat Credit.

6. The Ld. DR for Revenue has supported the impugned Order-in-Appeal and Order-in-Original.

6. We have taken into consideration the rival contentions. The issue before us is whether Cenvat Credit of NCCD paid which was subsequently refund through specific notification will over Aside ~~side~~ the provisions of Rule 3 ibid and whether the provisions of Rule 12 will interfere with the admissibility of Cenvat, provided through Rule 3 of Cenvat Credit Rules, 2004. We find that Rule 12 provides that Cenvat Credit of duty paid on inputs, which is subsequently refund through said notification No.32/99-CE, is admissible as if no such refund had been granted to the manufactures of inputs. The said Rule does not prohibit from any such similarly worded notification having similarly provision in respect of some other component of input credit disentitled for such credit. Further, we find that Rule 3 of Cenvat Credit Rule, 2004 also has no such provision that Cenvat Credit of NCCD paid if subsequently refund through specific notification, is not entitled for availment. We, therefore, are satisfied that Cenvat Credit of Rs.44,48,950/-, availed by appellants, was in respect of NCCD paid by them and has satisfied all requirements of Rule 3 of Cenvat Credit Rules, 2004 and we did not find any Rule quoted in the show cause notice which prohibits availment of Cenvat Credit of duty paid on inputs, if such duty paid

on inputs is subsequently refund through any notification. We, therefore, allow the Appeals with consequential relief to the appellants as per Law.

(Pronounced in the open Court---29/09/2016)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

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25.10.16

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(C.E.S.T.A.T.)
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