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: 08/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **A/70308/2016-EX[DB]** dated **01/06/2016**</u>

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
:	E/2290/2007	**PREMIER PACKAAGING PVT LTD** G.T.ROAD, MOHAN NAGAR, GHAZIABAD(UP)
		Name and Address of Respondent
:		-C.C.E. GHAZIABAD C.G. O. Complex-II. Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3<u>Advocate(s) / Consultant(s)</u> : SH V.L.KUMARAN.ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

4 Bar Association, CESTAT, Allahabad
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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, Ist Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

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

Asstt. Registrar

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

APPEAL No.E/2290/2007 (DB)

(Arising out of Order-in-Appeal No. 67-CE/GZB/2007 dated 09/07/2007 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
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

Premier Packaging Pvt. Ltd — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri B.C. Narasimhan, Advocate
Shri Hrishikesh, Advocate — for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 01/06/2016
Date of Decision : 01/06/2016

FINAL ORDER NO. 70308/2016...........

Per: Anil G. Shakkarwar

Present appeal is filed by Premier Packaging Pvt. Ltd against Order-in-Appeal No. 67-CE/GZB/2007 dated 09/07/2007.

2. The brief facts of the case are that the appellant are manufacturer of corrugated boxes and with effect from 12.03.2001 paid Central Excise duty on their final products which is corrugated boxes. During the scrutiny of record it was noticed that during the period from 12th march, 2001 to 31st, May 2001 corrugated boxes were cleared without payment of duty on 51 invoices on which job work bill was mentioned. The appellants informed to be department that the said goods were manufactured out of raw materials supplied by M/s S.B.C.H. and they have only received job work charges and on manufacture, corrugated boxes were sent to M/s S.B.C.H. without payment of duty and as per notification 214/86 dated 25.03.1986 they were exempted from payment of excise duty as job worker. It appeared to the department that the conditions laid down in the notification No. 214/86 were not fulfilled by the appellant, Therefore, by invoking the provisions for extended period, show cause notice No. 04/JC/GZB/2006 dated 02.02.2006 was issued to the appellant demanding ~~control~~ central excise duty of Rs.5,76,854/-.

3. Above stated show cause notice was decided through Order-in-Original No. 06/ADC/GZB/07 dated 31.01.2007 wherein a demand of

Rs.4,97,288/- was confirmed, equal penalty was imposed on appellant and appellant were ordered to pay interest. The appellant preferred an appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the said appeal through Order-in-Appeal No. 67-CE/GZB/2007 dated 09.07.2007. The learned Commissioner (Appeals) did not find any infirmity in the Order-in-Original and rejected the appeal. Aggrieved by said Order-in-Appeal, the appellant is before us.

4. The ground of appeal is inter-alia that the demand is barred by limitation. The appellant has stated that the requirements of invoking extended period has not been fulfilled by revenue for issue of show cause notice dated 02.02.2006. They have relied on various case laws.

5. Heard the Learned Counsel for appellant who has interalia submitted that para 4 of the said show cause notice deals with proposal of invocation of provisions for extended period, Para 4 of said show cause notice is reproduced bellow.

> "4. Further, the party has not intimated to the Department about the said facts at the time of their clearance and submission of returns of documents from time to time to the Department with an intention to evade payment of Central Excise duty. Therefore, the provisions of Section 11A(1) of the Central Excise Act, 1944 are invokable for demand and recovery of Central Excise duty for the extended period under such circumstances."

He further contended that the show cause notice was issued on 02.02.2006 and the period covered is before 31.05.2001 and under law it is essential that one of 5 ingredients such as fraud, collusion, any willful misstatement, suppression of facts or contravention of any of the provisions of Central Excise Act or Rules made thereunder has to be established and also its to be established that there was intention to evade payment of duty and that unless these two aspects are established extended period cannot be invoked. He has prayed to set aside the Order-in-Appeal and hold that the said show cause notice is unsustainable.

6. Learned Assistant Commissioner AR has reiterated the findings in impugned order-in-Appeal.

7. We have gone through the rival contentions and above referred para 4 of the show cause notice. We have also gone through the provisions of Section 11A of Central Excise Act, 1944 as was applicable during the material time. We agree with the learned counsel that if the provision for invocation of extended period is to be applied in a particular case separately one of the five ingredients such as fraud, collusion, any willful misstatement, suppression of facts or contravention of provisions of Act or Rules made thereunder needs to be established and also intention to evade is also to be established. We find that in the present show cause notice revenue could not establish any of the above said 5 ingredients. Therefore, on limitation the above said show cause notice is not sustainable. We, therefore, set aside the order-in-appeal and order-in-original and allow the appeal with consequential relief, if any. No Costs.

(Dictated in Court)

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

-- Sd/ --
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
14.7
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