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/70929/2016-SM[BR] dated 23/06/2016

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/2325/2010	KURELE PAN PRODUCTS PVT. LTD. C-87/1, B.S. ROAD, INDUSTRIAL AREA, SITE-I, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3Advocate(s) / Consultant(s): SH ANURAG MISHRA,ADV
117/10, S.K.APARTMENT
SARVODAYA NAGAR, KANPUR

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

Ex.Appeal No.2325/10

Arising out of OIA No.59-CE/GZB/2010 dated 29/04/2010 passed by the Commissioner (Appeals-), Central Excise, Customs & Meerut I

For approval and signature:

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

---

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

---

M/s Kurele Pan Products Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. Customs, Ghaziabad

RESPONDENT (S)

APPEARANCE

S/Shri Anurag Mishra & Varun Prakash, both Adv. for the Appellant (s)
Shri R. K. Mishra, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 23.06.2016

Final ORDER NO. 70929/2016

Per Mr. Anil Choudhary :

The appellant are manufacturer of pan masala et cetera, is in appeal against order in appeal dated 29/4/10 passed by the Commissioner of Customs and Central Excise, Meerut I.

2. The brief facts are that the appellant closed down its manufacturing activity with effect from 14/11/2007 ~~as~~ and there was a balance of Rs.42,28,910/- in the PLA account. Accordingly, the appellant filed a refund claim for the said amount on 8/2/2008. The Asstt. Commissioner vide order-in-original dated 12/2/2009, rejected the refund claim against which the appellant preferred appeal before ld. Commissioner (Appeals), who was pleased to allow the appeal by way of remand and pursuant to remand vide Order-in-Original dated 1/1/2010, refund of Rs.26,59,238/- was sanctioned and the balance amount being Rs.15,69,672/- was rejected on observing that some ready to pack gutka of 15,800 Kg. valued at Rs.31,60,000/- which was seized on 30/5/2006, and pursuant to SCN vide Order-in-Original dated 13/2/09, it was held that the said gutka was not dutiable being semi-finished goods with further direction to the appellant to account for the said gutka on completion of the manufacturing process. Thereafter, the appellant~~'s~~ on finding that the said semi finished gutka, which was lying under seizure for about 2 years, has become unfit for human consumption, applied for destruction on 27/2/09 and in reply dated 6/10/2009, the Deputy Commissioner observed that as the goods were ~~to~~ in semi-finished condition, no permission for destruction is required. Thereafter the appellant further filed representation dated 23/4/2010 before the

Commissioner of Central Excise seeking permission for destruction as the goods are no longer fit for human consumption. The said representation was disposed of by the Commissioner ~~with the~~ vide communication dated 1/2/11 on observing that the appellant has not complied with the order-in-original dated 13/2/09 passed by the Commissioner of Central Excise, Ghaziabad, further observing that the request for destruction has already been rejected by the Divisional Deputy Commissioner. The Deputy Commissioner adjudicating the refund application further observed that the said goods are still lying with the party which might be required to be taken into account at a later date. He further observed that the refund of unspent advance deposits lying in balance in the appellant's current account maintained with Commissioner of Central Excise, is only permissible when the party closes their business and cleared off all the liability of the Department and surrender their registration. He has further obsereved that the registration certificate has not been surrendered yet.

3. So far the refund was sanctioned for Rs.26,59,238/-, the Asstt. Commissioner further appropriated an amount of Rs.11,06,025/- and issue cheques for the balance amount dated 1/01/10 for Rs.15,52,203/-. Being aggrieved the appellant carried the matter before the Commissioner (Appeals) challenging the rejection of the refund for Rs.15,69,672/- and appropriation of the amount of Rs.11,06,025/-. The ld.Commissioner was pleased to reject the appeal observing that under Section 11 of the Act, the appropriate officer has empowered to appropriate or deduct the amount so payable

from any money even from a person from whom such amount may be recoverable or due which may be in his hands or under his disposal or control or in the control of such other officer. He further observed that in the facts of the present case, the adjudicating authority was justified in appropriating the amount due to the Govt. from any money owing to the appellants.

4. Being aggrieved the appellant is in appeal before this Tribunal.

5. The ld. Counsel Mr. Anurag Mishra, urges that so far the amount of Rs.15,89,672/- is concerned, it is admitted fact that this amount is not any adjudicated dues. Thus, the ld. Commissioner (Appeals) have erred in holding the said amount recoverable and/or adjustable from the refund amount. So far as the amount of Rs. 11,06,025/- which has been adjusted on account of adjudicated dues from the sanction amount of refund. It is stated that the amount of Rs.4,46,567/- is the demand pursuant to order in original dated 18/2/09. The said matter had reached before this Tribunal and vide the final order number 621/2011 – SM (Br.) dated 2/9/11, this Tribunal allowed the appeal by way of remand to the adjudicating authority setting aside the impugned order. The said issue is pending for re-adjudication as on today. The balance amount of Rs.6,59,468 was adjudicated vide Order-in-Original dated 13/2/09 which stands confirmed by this Tribunal, against which the appellant had preferred appeal before Honourable High Court but subsequently withdrawan the same. Thus, the amount of Rs.6,59,468/- is crystallized demand, no longer in

dispute. Accordingly, the ld.Counsel prays for grant of refund with interest as per Rules of Rs.15,69,672/- + Rs.4,46,567/-.

6. The ld. A.R. for revenue relies on the impugned order.

7. Having considered the ~~level~~ rival contentions I find that ~~the~~ only adjudicated dues are recoverable under the provisions of Section 11 of the Act. Thus, I hold that the amount of Rs15,69,672/- have been wrongly appropriated. I further direct the adjudicating authority to refund the amount of Rs.15,16,672/- with interest as per Rules within 60 days from the date of receipt of this order. So far the amount of Rs.4,46,567/- is concerned, I find that the matter is pending pursuant to remand by this Tribunal ~~with~~ vide the earlier order dated 2/9/11 as noted hereinabove. Thus, I hold that the refund of Rs.4,46,567/- will be subject to the finalisation of adjudication pursuant to remand. The adjudicating authority is further directed to pass a reasoned order within a period of 60 days in terms of the earlier order of this Tribunal dated 2/9/11. Thus, the appeal is allowed in the aforementioned terms with directions.

(Pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

... Copy
25.10.16
/ Asstt. Registrar
(C.E.S.T.A.T.)
ALLAHABAD-211001