FAX : 0532-2400149

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

Dated: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70852/2016-SM[BR] dated 09/09/2016

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/51087/2015	**DHARAMPAL PREMCHAND LTD** I-62, SECTOR-9 NOIDA,UP 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42:..SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

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

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

8Taxmann 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-19,1st 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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/51087/2015-EX[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APP/270/201-15 dated 23/12/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida.)

For approval and signature:

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

Dharampal Premchand Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri T.R. Rustagi, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 09/09/2016

FINAL ORDER NO. 70852/2016.........

Per: Anil G. Shakkarwar

The appellant, M/s Dharampal Premchand Limited, is in appeal against Order-in-Appeal No. NOI/EXCUS/000/APP/270/2014-15.

2. The brief facts of the case are that the appellant is engaged in the manufacture of Chewing Tobacco and registered with Central Excise Department under Registration No. AAACD1952BXM013 and availed Cenvat facility. The appellant has procured plastic laminated packing pouches as their inputs for packing their finished goods and avail Cenvat credit of Rs.2,00,879/-. Subsequently, Hon'ble Supreme Court ordered that plastic laminated packing pouches should not be used for packing of Chewing Tobacco. The said order of Supreme Court was pronounced on 11th May, 2011 and the Cenvat credit, stated above, was taken by the appellant in their books of accounts for the period from March, 2009 to March, 2011, much before said pronouncement by the Hon'ble Supreme Court. It appeared to Revenue that since the plastic laminated packing pouches was brought into cannot be used after 11th May, 2011, the Cenvat credit of Rs. 2,00,879/- availed on the same is recoverable. Therefore, Revenue issued a Show Cause Notice dated 07-12-2013. The proposal in the Show Cause Notice was to demand and recover Cenvat credit of Rs. 2,00,879/- under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of Central Excise Act, 1944. There were also

proposals for charging interest and imposing penalty. The appellant submitted before the Original Authority that the plastic laminated packing pouches were in use for a long time for packing of products Chewing Tobacco and therefore, they were eligible inputs for a long time and Cenvat credit was availed on the same does not become ineligible because the said plastic laminated packing pouches material cannot be used for packing in the final product. They further stated that at the time credit was taken there was no final order passed by Hon'ble Supreme Court about use of the plastic laminated packing pouches for the packing of goods in question and therefore they were legally entitled to take Cenvat credit at the time of receipt of such packing material as input. They further stated that all the conditions for taking the credit were satisfied and there could be no intention to take inadmissible credit. The credit was taken correctly as legal and admissible under the law, and the said packing material procured into the factory was lying in the stock. The Original Authority could not appreciate the contentions of the appellant. Through Order-in-Original No. 07/DC/N-I/2014-15 dated 23-12-2014, the Original Authority was confirmed the demand of Cenvat credit amounting to Rs.2,00,879/- under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of Central Excise Act, 1944 and appropriated amount of Rs.2,00,879/- debited from Cenvat account and further confirmed the demand of interest of

Rs.3,82,811/- under Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs.4,01,758/- under Rule 15 of Cenvat Credit Rules read with Section 11A of Central Excise Act, 1944. The appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) has decided the appeal through Order-in-Appeal No. NOI/EXCUS/000/APP/270/2014-15 dated 23-12-2014, wherein he has held that the Original Authority ~~was~~ as erred in imposing penalty under Section 11A of Central Excise Act, 1944 since there is no provision of penalty under aforesaid Section 11A of Central Excise Act, 1944 and set aside the said penalty imposed and modified Original Order to that extent.

3. Aggrieved by the Order-in-Appeal dated 23-12-2014, the appellant preferred appeal before this Tribunal, the grounds inter-alia, are as follows:-

(a) The ld. Commissioner (Appeals) has erred in not appreciating the fact that at the time, the credit was taken and at the time the credit was utilized, the fact of taking and utilizing the credit was perfectly legal and that under the said Cenvat Credit Rules, 2004 there is no requirement of one-to-one correlation between the input and the finished goods and that credit is admissible immediately after receipt of the inputs.

(b) The ld. Commissioner (Appeals) could not appreciate that the argument in the Show Cause Notice was that the

Cenvat credit already taken (before 11-05-2011) attributable to the stock of plastic material left thereafter 11-05-2011 was termed as wrongly taken and there is no provision in the Central Excise Rules providing that if input is eligible on the date of taking credit and subsequently the same is banned from used the Cenvat credit already taken needs to be reversed.

4. Heard the ld. Counsel, He has reiterated the grounds of appeal, he has submitted a copy of Hon'ble Supreme Court ruling in the case of Collector of Central Excise, Pune *Versus* Dai Ichi Karkaria Ltd. reported at 1999 (112) E.L.T. 353 (S.C.) wherein the Hon'ble Supreme Court has held that when the credit that has been validly taken, its benefit is available to the manufacturer without any limitation in time the above stated ruling has been relied upon by Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore *Versus* Tata Advanced Materials Ltd. reported at 2011 (271) E.L.T. 62 (Karnataka) wherein it has been held that there is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been taken irregularly and argued that when the Cenvat credit was taken it was eligible to him and therefore such Cenvat credit cannot be recovered by the Excise Authorities.

5. Ld. D.R. relies on para 5 of impugned Order-in-Appeal.

6. I have taken the rival contentions into consideration. I find that the date on which Cenvat credit was taken by the

appellant the inputs on which the Cenvat credit was taken were regularly in use for packing the finished product and therefore the Cenvat credit availed was eligible. I also find that Cenvat credit which is validly taken needs to be reversed only when the inputs are cleared as such. I, further, note that Rule 14 of Cenvat Credit Rules, 2004 provided for recovery of irregularly availed Cenvat credit and it is beyond the scope of said Rule 14 of Cenvat Credit Rules to recover the Cenvat credit which was validly taken. I, therefore, hold that the Show Cause Notice is misconceived and therefore, I set aside the Show Cause Notice, Order-in-Original and Order-in-Appeal and allow the appeal. The appellant shall be entitled for consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति / Certified True Copy
25.10.16