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

Dated: 13/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70553/2017-EX[DB] dated 18/05/2017

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/Stay/2249/2007	E/2596/2007	BAKUL POLY PACK PVT. LTD, D-50,SITE-5, DADA NAGAR, UDYOGKUNJ, KANPUR
			Name and Address of Respondent
2			-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3 Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR,UTTAR PRADESH
208002

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

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

APPEAL No.E/2596/2007-EX[DB]

(Arising out of Order-in-Original No. 10/Commr/LKO/2006-07 dated 23/03/2007 passed by Commissioner of Central Excise, Lucknow)

M/s Bakul Poly Pack Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Amit Awasthi, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 18/05/2017
Date of Decision : 18/05/2017

FINAL ORDER NO - 70553/2017.........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 10/Commr/LKO/2006-07 dated 23/03/2007 passed by Commissioner of Central Excise, Lucknow.

2. The brief facts of the case are that the appellant were issued with a show cause notice F.No.161/INT/DGCEI/HQ/2003 dated 20.10.2004 wherein they were called up on, to show cause as to why, penalty

should not be imposed on them under Rule 27 of Central Excise Rules, 2002. In the said show cause notice, there was a proposal for recovery of Central Excise Duty of Rs.7,17,16,580/- from Shyam Traders, Lucknow, who were manufacturers of 'Shyam Bahar Gutkha'. The appellants were alleged to ~~had~~ have supplied unaccounted packing material to the manufacturers M/s Shyam Traders. Therefore, appellants were called upon to show cause, as to why, penalty under Rule 27 of Central Excise Rules, 2002 should not be proposed on them. The appellant contested the proposal. The said show cause notice was adjudicated through Order-in-Original No. 10/Commr/LKO/2006-07 dated 23.03.2007. Through the said order the original authority confirmed the demand of Central Excise duty of Rs.7,17,16,580/- against M/s Shyam Traders, Lucknow. Further, in addition to various other orders, original authority imposed penalty of Rs.75lakhs on appellant under Rule 26 of Central Excise Rules, 2002. On page No.93 of the said Order-in-Original dated 23.03.2007 the learned original authority has held that the show cause notice proposed imposition of penalty under Rule 27 of Central Excise Rules, 2002 and since it was incorrect and wrongly invoked, further held that in the facts of the case, Rule 26 should have been invoked on the appellants and therefore he was satisfied that penalty under Rule 26 of Central Excise Rule, 2002 was being imposed on the appellant. Aggrieved by the said order, appellant is before this Tribunal.

3. The grounds of appeal states that the appellant was not put to notice to present their defense as to why penalty under Rule 26 of Central Excise Rules, 2002 should not be imposed on them. They have also contended that the original authority had traveled beyond the show cause notice by imposing penalty under Rule 26 of the said Rules.

4. Learned Counsel Shri Amit Awasthi, Advocate on behalf of the appellant have contended that in so for as the said Order-in-Original is concern that the original authority imposed penalty under Rule 26 on appellant, the same is not sustainable because the order has traveled beyond the show cause notice.

5. The learned A.R. for Revenue has supported the impugned Order-in-Original.

6. Having considered the rival contentions, we find that the imposition of penalty of Rs.75lakhs on the appellant through the said Order-in-Original dated 23.03.2007 was beyond the proposal of imposition of penalty under Rule 27 on the appellant through said show cause notice dated 20.10.2004. Therefore, we find that imposition of penalty of Rs. 75lakhs on the appellant through the above sated Order-in-Original is not sustainable.

7. Therefore, we set aside the said imposed penalty and allow the appeal. The appellant shall be entitled for consequential relief, in accordance with law.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Cerified True Copy
16/06/2017
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