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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70110/2017-SM[BR] dated 20/01/2017

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/52802/2014	**Paramount Pesticides Limited** 53-b, Mohkampur Industrial Area, Phase-1, MEERUT, UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

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Copy To
3Advocate(s) / Consultant(s):

Arun Kumar Jain & Associates
127, CITI CENTRE,
BEGUM BRDIGE ROAD,
MEERUT CITY,
UTTAR PRADESH
250001

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/52802/2014-EX[SM]

(Arising out of Order-in-Appeal No. 14-CE/APPL/PD/MRT-I/2014 dated 03/02/2014 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

For approval and signature:

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

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

Paramount Pesticides Limited **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I **Respondent**

Appearance:

None for Appellant

Shri Pawan Kumar Singh, Superintendent, (AR). for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 16/09/16 final ORDER NO...70110/2017........

Per: Anil Choudhary

The appellant are engaged in the manufacture of pesticides, an excisable product, was required to deposit Central Excise Duty amounting to Rs.8,88,672/- for the month of May, 2011 on or before 05-06-2011. The appellant deposited Rs.4,33,531/- through Cenvat credit and remaining amount of Rs.4,47,111/- was not deposited within the prescribed time which could have been deposited with interest within the extended period of one month i.e. on or before 05-07-2011. Later on they paid the amount of Rs.4,47,111/- along with interest vide GAR-7 Challans dated 14-07-2011 & 18-07-2011, that is after 13 days of the extended due date being 05-07-2011. It appeared to Revenue that the appellant has violated the provisions of Rule 8(3A) of Central Excise Rules, 2002, it was accordingly required to pay duty through PLA account only on consignment basis since 06-07-2011 to 17-07-2011. But during this period appellant continued to utilize Cenvat credit in contravention of Rule 8(3A) and accordingly demand of Rs.8,30,003/- was made with interest and penalty was proposed vide SCN dated 20-06-2012 and same was adjudicated vide Order-in-Original dated 26-08-2013, confirming the proposed demand with interest and equal amount of penalty under Rule 25 Sub-rule 1(a) of Central Excise Rule, 2002. Being aggrieved the appellant had preferred appeal before ld. Commissioner (Appeals) who vide the impugned order dismissed, the appeal for non-compliance with ad-interim order dated 23-12-2013, directing the appellant to deposit 50% of the confirmed demand of duty of Rs.4,15,002/-.

2. The appellant being aggrieved preferred appeal before this Tribunal. The ld. Counsel for the appellant has filed time petition stating that they have not received the notice but have come to know about the dated fixed through the cause list. The reason for adjournment being found inadequate, the request is rejected.

3. Heard the ld. A.R. for Revenue and perused the records.

4. Having considered the rival contentions, I find that the issue herein is settled by Hon'ble Gujarat High Court in facour of the assessee in the case of Commissioner of Central Excise & Custom *Versus* Saurashtra Cement Ltd. Gujarat reported at 2010 (09) L.C.X.0073, wherein it has been held that the restriction to utilize Cenvat credit in the case of default in payment of duty beyond the prescribed period is an unreasonable restriction and hit by Articles 14 & 19 of the Constitution of India and also against the Scheme of Central Excise Act read with Rules. In this view of the matter, I find that said ruling is applicable in the facts of the present case. Accordingly, I allow the appeal with consequential benefits to the appellant. The impugned order is set aside.

(Operative part of the order was pronounced in the Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
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