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: 23/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70282/2017-SM[BR] dated 21/03/2017

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/MISC/70507/2016 | E/70048/2015 | **Satya Prkash & Co** By Pass,Jalpur Road,kaimganj FARRUKHABAD UP |
| | | Name and Address of Respondent |
| 2 | | C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002 |

Copy To

3Advocate(s) / Consultant(s):

**K.VAISH &CO**
**KRISHNA JANKI**
**PALACE,35-C,RAMPUR**
**GARDEN,BAREILLY-201301**

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/70048/2015-EX[SM]
WITH
MISC Application No.E/MISC/70507/2016

Arising out of Order-in-Appeal No.257-CE/APPL-AGRA/LKO/2015 dated 08.07.2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

**For approval and signature:**

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

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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

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M/s Satya Prakash & Co.

...APPELLANT(S)

**VERSUS**

Commissioner of Central Excise & Service Tax, Agra

...RESPONDENT (S)

**APPEARANCE**

Shri Kapil Vaish, CA for the Appellant (s)

Shri D.K. Deb, Asstt. Commr. (AR) for the Respondent (s)

**CORAM:**

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

DATE OF HEARING & PRONOUNCEMENT: 14.12.2016

FINAL ORDER NO.- 70282/2017

**Per Mr. Anil Choudhary :**

The issue in this appeal is, whether under the admitted facts that the Tobacco making factory of the appellant was lying closed from 01.04.2012 to 15.04.2012 and admittedly production started on 16.04.2012, when vide Panchnama drawn by the Excise Officers, one machine was unsealed and the production commenced, whether, the appellant-assessee was required to deposit the duty under the Compounded Levy Scheme for the whole month of April 2012 and then seek abatement under the provisions of Rule 10 of TPM Rules, 2010 or was required to deposit proportionate duty for the number of working days of April 2012 under the provisions of Rule 9 of TPM Rules, 2010, as have been done.

2. Heard the parties.

3. Having considered the rival contentions, I find that Rule 9 of Tobacco Packing Machines Rules, 2010 provides the manner of payment of duty and interest of the notified goods, shall be paid by the $5^{th}$ of the Month and an intimation in Form-II shall be filed with the jurisdictional Superintendent by $10^{th}$ of the same month. Further provided – that in case of increase in the number of operating packing machines in the factory during the month, on account of addition or installation of packing machines, the differential duty shall be paid by the $05^{th}$ of the following month. Further, Rule 10 provides for abatement - in case of non production of goods, where a factory did not produce the notified goods during any continuous period of 15 days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such

goods files an intimation to this effect with the Central Excise Officers as the case may be, at least three working days prior to the commencement of such period.

3.1 On a harmonious reading of the provisions noticed herein above, it is evident that admittedly the appellant have not done any production **nor of any addition in machines during April, 2012.** Accordingly, the appellant was required to deposit the duty, as it is case of addition of machines (as provided under Rule 9), the duty have been rightly paid before the 05th of the next month. Accordingly, I find that the Ld. Commissioner (Appeals) is in error in confirming the interest on the duty payable for the proportionate number of days. I also find that the Ld. Commissioner (Appeals) have erred in observing that in the facts and circumstances of this case, the appellant should not have availed suo-moto abatement and the same is in violation of Rule 10 of TPM Rules 2010. On a harmonious reading of Rules 9 & 10 together under the admitted facts, there is proper compliance in taking suo-moto abatement as the fact of the closer of the factory for a continuous of 15 days, was in the knowledge of the Revenue, as is evident from the Panchnama dated 16.04.2012. Accordingly, I hold that there is no violation of provisions of Rule 10 of TPM Rules, 2010. Accordingly, I allow the appeal and set aside the interest confirmed on the duty payable, by the Ld. Commissioner (Appeals). The Misc. Application also stands disposed of.

(Dictated and Pronounced in the open Court)

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

Mishra

प्रमाणित प्रति / Certified True Copy
23/03/17
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