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: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70008-70009/2018-SM[BR] dated 01/01/2018

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/2249/2011	**A.M. P. PRODUCTS LTD.** 1209/13, RAEBARELI ROAD, VILLAGE-JABRAULI, MOHANLALGANJ, LUCKNOW.
2	E/2250/2011	**A.M.P. PRODUCTS LTD.** 1209/13, RAEBARELI ROAD, VILLAGE-JABRAULI, MOHANLALGANJ, LUCKNOW.
		Name and Address of Respondent
3		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. K. Pandey,Adv
62, KHURSHED BAGH,
LUCKNOW,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos.E/2249 & 2250/2011-EX[SM]

(Arising out of Order-in-Appeal No. 153 & 151-CE/LKO/2011 dated 27/06/2011 both passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s A. M. P. Products Ltd. **Appellant (s)**

Vs.

Commissioner of Central Excise, Lucknow **Respondent (s)**

Appearance:

Shri S. K. Pandey, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commr. (AR) for Respondent

CORAM:

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

Date of Hearing : 26/12/2017
Date of Decision : 26/12/2017

FINAL ORDER NOs. 70008-70009/2018

Per: Anil G. Shakkarwar

The above stated two appeals are having a common issue of interpretation of 1st proviso to Rule 10 of Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 for different periods and therefore they are taken together for decision.

2. The brief facts of the case are that the appellants were manufacturer of Pan Masala under brand name of "Sanchar" and the said goods are notified under Section 3A of Central

Excise Act, 1944. In addition they were also manufacturing "Pan Samagri" which were not the goods notified under Section 3A of the Central Excise Act, 1944. The appellants claimed abetment for the period from 16/08/2008 to 31/08/2008, which is subject to matter of Appeal No. E/2250/2011-EX[SM]. Similarly, appellants claimed abatement for the period from 16/09/2008 to 31/09/2008 and from 01/10/2008 to 15/10/2008 which is subject to matter of Appeal No. E/2249/2011-EX[SM]. The proceeding culminated into passing of order by first Appellate Authority wherein the first Appellate Authority has interpreted that no goods even non notified, should be cleared by the manufacturers of notified goods to make the manufacturers of notified goods eligible for abatement under Rule 10 of said Rules.

3. Heard the Learned Counsel for the Appellant. The Learned Counsel has submitted that at several places in the said rules word 'goods' is used in place of notified goods and illustrated the same to the wording in the Rule 9 of said Rules. He has also submitted that if other goods are intended to be prohibited from removal during the period of closer of a factory or sealing of the machines then such interpretation will be contrary to the provisions of Sub-section (3) of Section 3A of Central Excise Act, 1944.

4. Heard the Learned A.R. who has submitted that the said proviso makes a mention that notified goods should not be manufactured and no goods should be removed including notified and non notified goods.

6. Having considered the rival contentions, I find that if non notified goods are prohibited from removal during the closer of factory or when the machines manufacturing the notified goods are sealed then such interpretation will mean that the rules have provided such provisions which are beyond the provision under Sub-section (3) of Section 3A of the Act and therefore it cannot be interpreted that even if non notified goods are removed, the said 1st proviso to Rule 10 prohibits abatement. I, therefore, allow both the appeals filed by the appellant. Appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

alp

प्रमाणित प्रति/Certified True Copy

29/01/18

35, M. G. MARG, ALLAHABAD-211001