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

Dated: 20/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71131-71132/2017-EX[DB] dated 06/09/2017

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/2252/2011	C.C.E, NOIDA C-56/42, Sector-62, Noida-201307
2	E/2551/2011	**DHARAMPAL SATYAPAL LTD.** B-1, SECTOR-3, NOIDA (U.P.)
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		DHARAMPAL SATYAPAL LTD. B-1, SECTOR-3, NOIDA. (U.P.),,

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

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

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, 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 Guard File

Asstt. Registrar

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

APPEAL No: E/2551 & 2252/2011-EX[DB]

(Arising out of Order-in-Original No. 04/Commr/Noida/2011-12 dated 28/07/2011 passed by Commissioner of Customs & Central Excise, Noida)

(Appeal No. E/2551/2011-EX[DB])

M/s Dharampal Satyapal Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

&

(Appeal No. E/2252/2011-EX[DB])

Commissioner of Central Excise, Noida **Appellant**

Vs.

M/s Dharampal Satyapal Ltd. **Respondent**

Appearance:

Shri T. R. Rustagi (Adv.)
(Appeal No. E/2551/2011-EX[DB])
Shri Pradeep Kumar Dubey (Supdt.) AR, for Appellant
(Appeal No. E/2252/2011-EX[DB])

Shri Pradeep Kumar Dubey (Supdt.) AR, for Respondent
(Appeal No. E/2551/2011-EX[DB])
Shri T. R.Rustagi (Adv.)
(Appeal No. E/2252/2011-EX[DB])

CORAM:

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

Date of Hearing : 06/09/2017
Date of Decision : 06/09/2017

FINAL ORDER NO. 71131 - 71132/2017

Per: Anil Choudhary

These cross appeals are against Order-in-Original dated 28/07/2011, wherein the Learned Commissioner have been pleased to deny the abatement for the period of closure of the factory under the Pan Masala Packing Machines (Collection of Duty and Determination of Capacity) Rules, 2008.

2. The brief facts as per the SCN are, that during the month of August, 2009, from 01/08/2009 to 17/08/2009 no packing machine was in operation. Declaration as required under Rule 6 for operating to packing machines from 18/08/2009 was filed on 07/08/2009 and accordingly, the machines were de-sealed by the Department officers on 18/08/2009. Therefore, the annual capacity of the factory had been re-determind ipso facto. Under the facts that the appellant was not operating its factory or any packing machine prior to 05/08/2009, the appellant did not pay the duty on 5th August for the month of August, but paid the duty by 5th of September, 2009. Thus the show cause notice sought to demand the duty amounting to Rs.1,19,81,162/- as it appeared to Revenue that the appellant could not have taken suo moto abatement and secondly interest was also demanded under Section 11AB on the said amount starting from 05/08/2009 till the date of deposit of the duty. Vide the impugned order the Learned Commissioner was pleased to confirm the demand of duty holding that appellant could not take suo moto abatement under the facts and circumstances and further have also demanded the interest.

3. Being aggrieved the assessee is in appeal on the ground that they have not violated the provisions of law by taking suo

moto abatement and the said issue is no longer res Integra in view of the ruling of Hon'ble Gujarat High Court in the case of Commissioner versus Thakkar Tobacco Products Private Ltd. reported at 2016 (332) E.L.T. 785. Further it is urged that no interest is leviable as in the case of addition of any packing machines during the month, the duty is due to be paid by the 5th day of the following month, as provided under Rule 9 of the PMPM Rules, 2008 read with the third proviso which reads as follows – provided as also 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 amount, if any, shall be paid by the 5th day of the following month. It is an admitted fact that the appellant have paid the duty on 05/09/2009 as permissible.

4. Whereas in the appeal of Revenue, the ground taken is non-imposition of penalty by the Learned Commissioner under Section 11AC of the Act read with Rule 17 of the said Rules.

5. Heard the parties.

6. Having considered the rival contentions and on perusal of records, so far the first issue of taking suo moto abatement is concerned we are satisfied that the same is squarely covered by the ruling of Hon'ble Gujarat High Court in Thakkar Tobacco Products Private Ltd. (supra) in favour of the appellant and accordingly the said ground is decided in

favour of the appellant assessee and against the Revenue. So far the second issue of interest is concerned we hold that the restarting of operation of the factory subsequent to 05/08/2009, amounts to increase in the number of operating packing machines in the factory during the month, and accordingly we hold that the payment of duty was required to be made by the 5th day of the next month, being September, 2009, which admittedly have been paid on such date. Accordingly we hold that no interest is payable under Section 11 AB of the Act by the appellant assessee in the facts of this case.

7. The third issue involved is regarding whether the appellant is entitled to abatement, as they have cleared raw material and packing goods which are not the notified goods. The Learned Commissioner have held that the term goods used in the second part of the proviso to Rule 10 means any goods and not only notified goods.

8. So far the issue of non-eligibility of abatement under Rule 10 is concerned for the reason that the appellant have cleared raw material and packing material during the period of closure, we find that the same issue has been considered by this Tribunal in appellant's own case being Appeal No. E/3395/2010 - EX [DB] vide Final Order dated 13/06/2017, wherein it have been held that as follows: -

9. *"Having considered the rival contentions and on perusal of the facts on record, we are satisfied that the word "goods" used in the second part of the first proviso to Rule 10 of the PMPM rules indicates only "notified goods" and nothing else. We are also satisfied that by no stretch of imagination, the word "goods" includes inputs. We also find that in the several provisions of the Central Excise Act and the Rules the word "inputs" has been used exclusively and never interchangeably with the words "goods". Further, this interpretation is also substantiated by the amendment of the the said PMPM Rules, 2010, wherein the word "notified" has been added before the word "goods" in the second part of the first proviso to the said Rule 10. The said amendment was brought by Notification No. 8/2010–CE (NT) dated 27/02/2010. Thus, the intention of legislature has been clarified by the subsequent amendment that the word "goods" appearing in the second part of the first proviso are only "notified goods" and nothing else. In this view of the matter, we set aside the impugned order and allow the appeal with consequential benefits. We also direct the Adjudicating Authority to grant the refund along with interest as per Rules within a period of 45 days from the date of service or receipt of a copy of this order."*

10. Accordingly we allow this ground also, in favour of the appellant assessee and against the Revenue.

11. Accordingly we allow the Appeal No. E/2551/2011-

EX[DB] by the appellant assessee and dismiss the appeal filed by the Revenue being Appeal No. E/2252/2011-EX[DB]. The appellant assessee shall be entitled for consequential benefits, if any, in accordance with law.

(Dictated & Pronounced in Court)

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

Lks

अभिप्रमाणित प्रति/Certified True Copy
04/10/17
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