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: 21/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70350/2018-EX[DB] dated 06/02/2018

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/CROSS/104/2012,	E/132/2012	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
			Name and Address of Respondent
2			Prabhoo Lal Ram Ratan Das (p) Ltd. 1185, Moti Ki Baghichi, Agra. (U.P)

Copy To

3Advocate(s) / Consultant(s):

**NISHANT MISHRA AND SUDARSHAN SINGH ADVOCATES
B2-3/4-31, SAROJANI APARTMENTS, SAROJANI NAIDU MARG, ALLAHABAD-211001**

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application No. E/CROSS/104/2012
APPEAL No. E/132/2012-EX[DB]

(Arising out of Order-in-Appeal No. 201-CE/APPL/KNP/2011 dated 30/08/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner, Customs & Central Excise, Kanpur **Appellant**

Vs.

M/s Prabhoo Lal Ram Ratan Das (P), Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt) AR for Appellant
Shri Nishant Mishra (Advocate) for Respondent

CORAM:

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

Date of Hearing	:	07/12/2017
Date of Decision	:	07/12/2017

FINAL ORDER NO.-70350/2018.......

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. 201-CE/APPL/KNP/2011 dated 30.08.2011 passed by Commissioner (Appeals), Customs and Central Excise, Kanpur. The appeal is filed by Revenue.

2. Brief facts of the case are that the respondent was manufacturing branded Chewing Tobacco. The dispute arose as to whether the branded chewing tobacco manufactured by

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the respondent was un-manufactured tobacco or manufactured tobacco. The rate of duty for manufactured and un-manufactured tobacco was different Revenue treated the goods to be manufacture tobacco and calculated the differential duty of Rs. 27.03 lakhs for the period from March, 2010 to January, 2011. The basis for arriving at the opinion that the goods manufactured by the respondents were manufactured tobacco was the communication dated 22.06.2010 issued by the Chemical Examiner who had mentioned that the samples received by him may be considered as manufactured tobacco in reference to Chapter Note 3 to Chapter 24 of the Central Excise Tariff Act. On contest the issue was decided through Order-in-Original dated 08.06.2011, wherein the demand was confirmed and equal penalty was imposed. Aggrieved by the said order responder preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal. The learned Commissioner (Appeals) has taken into consideration the communication received from chemical examiner and relying on this Tribunal's Final Order in the case of M/s Riddhi chemicals Vs Commissioner of Central Excise, Belgaun reported at 2011 (270) ELT 291 wherein it was held that personal opinion of the chemical examiners cannot decide the classification of the goods. Through the impugned Order-in-Appeal Learned Commissioner (Appeals) accepted the stand taken by respondents to present appeal. Aggrieved by the said order, Revenue preferred appeal before this Tribunal.

3. The ground of the appeal preferred by Revenue states that the learned Commissioner (Appeals) has ignored the report of the chemical examiner and that the goods are manufactured tobacco.

4. Heard the learned AR who has presented the grounds of appeal. Heard the learned counsel for the respondent who has submitted that the chemical examiner did not give the chemical composition of the samples forwarded to him but he has referred to Chapter Note 3 and gave his opinion that the goods were manufactured tobacco.

5. Having considered the rival contentions and on perusal of records we find that in the present case Revenue wants to delegate the power of adjudication to the chemical examiner which is beyond the scope of Central Excise Act, 1944. The job of the chemical examiner is to analyse the samples forwarded with reference to the test and give the result. It is the responsibility of the Adjudicating Authority to take chemical examiner's report and apply it to the facts and provisions of law and the entries in the Central Excise Tariff and decide classification of the goods. The Original Authority has failed in doing so and he has accepted adjudication by the chemical examiners that the goods were manufactured

tobacco. We, therefore, do not find any strength in the grounds raised by Revenue. We uphold the impugned Order-in-Appeal and reject the appeal filed by Revenue. Cross objection also stands disposed of.

(Dictated and pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Cerified True Copy
05/03/18
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