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: 17/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71436/2017-SM[BR] dated 16/11/2017

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/70192/2017	**Dharampal Premchand Ltd** 6a-34,35,sector-60 NOIDA UP- 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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

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

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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

<u>Ex.Appeal No.70192/17</u>

Arising out of O/A No.NOI-EXCUS-001-APP-0950-16-17 dated 28.12.2016 passed by Commr. (Appeals) of Central Excise, Customs, Noida II

M/s Dharampal Premchand Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri T.R.Rustagi, Adv. for the Appellant (s)
Shri Sandeep Kumar Singh, Dy. Commissioner (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 16. 11. 2017

Final ORDER NO. 71436/2017

Per Mrs.Archana Wadhwa :

The appellants are engaged in the manufacture of chewing tobacco and were working under the Chewing Tobacco & Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. The appellant's unit was closed w.e.f. 01.09.2015 to 21.09.2015 as a consequence of which the appellant was entitled to the abatement of duty for the said period in terms of Rule 10 of the said Rules. The said Rules require an assessee to deposit the duty by 5th of the next month and to claim the abatement subsequently and to adjust the same.

2. As the appellant deposited the duty on 24.09.2015, Revenue was of the view that for the period 5th September to 24th September, the assessee is

liable to pay interest. Accordingly, proceedings were initiated against them resulting in passing of the present impugned order.

3. It stands brought to my notice ~~and~~ that the issue stands decided by the precedent decision of the Tribunal in the same assessee's case i.e. Dharampal Satyapal Ltd. Vs. Commr. of Central Excise, Noida reported at 2017 (10) TMI 76-CESTAT Allahabad. The Tribunal by following the Hon'ble Gujarat High Court in the case of Commissioner Vs. Thakkar Tobacco Products Pvt. Ltd. reported at 2016 (332) ELT 785, held as under :

> *"6...*
>
> *........................*
>
> *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 11AB of the Act by the appellant assessee in the fact of this case."*

4. Both sides agree that the above decisions of the Tribunal are squarely applicable to the facts of the present case. In fact, the ld.Advocate draws my attention to the fact that the Tribunal directed the adjudicating authority to grant the abatement along with interest as per Rules. As such, he prays for the same treatment. He also ~~prays~~ brings it to my notice that in a subsequent order, the Commissioner (Appeals) has himself granted relief to the assessee.

5. In view of the foregoing, I set aside the demand of interest and also hold that the abatement claim of the appellant, would be dealt with along

Ex.Appeal No.70192/17

with interest as held by the Tribunal in the earlier case referred (supra). Appeal is allowed in the above terms.

Dictated and pronounced in the open Court

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
11/12/17
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