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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2085/2009 - EX[DB] with E/S/2171/09 Date 14/09/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S RANA SUGARS LTD.
SHAHBAD, DISTT. RAMPUR.

M/S RANA SUGARS LTD. Appellant
Vs
C.C.E. MEERUT II STAY ORDER NO.945/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 682 2009 EX[DB]** dated 07-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
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18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

COURT-I

Date of hearing/decision: 07.09.2009

Excise Appeal No. 2085 of 2009 with Excise Stay No. 2171 of 2009

[Arising out of Order-in-Original 58/Commr/MRT-II/2008 dated 31.12.2008 passed by the Commissioner, Customs & Central Excise, Meerut]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
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 Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Rana Sugar Limited — Appellant

Vs.

CCE, Meerut-II — Respondent

Appearance:

Shri Vikrant Kackria, Advocate for the appellant.
Shri Anil Khanna, SDR for the respondent.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

STAY ORDER NO 945/09-EX

FINAL Oral Order No. 682/09-EX.

Per : M. Veeraiyan:

Heard both sides on the stay petition for a while and considering the issue involved, it was felt that the appeal itself could be disposed of and, accordingly, pre-deposit of dues as per the impugned order is waived and appeal is taken up for final disposal.

2. The relevant facts, in brief, are that the appellant has taken cenvat credit on capital goods received for installation of their plant and machinery. The credit so taken for the period from January 2007 to February 2007 was Rs.89,41,540/-. Appellant also filed periodical returns indicating the credit taken by them even though they have not commenced production and clearance and hence have not utilized the same. The Department pointed out in December 2007, and immediately they debited the entire amount of credit taken by them. They are not disputing the reversal of the credit taken by them. A show cause notice was issued alleging that the appellants have wrongly taken the credit and, therefore, interest should be paid for the period from the date the credit was taken till they debited the amount and confirmed. In addition, a penalty of Rs. 10 lakhs was also imposed.

3. Learned Advocate for the appellant submits that it was due to misunderstanding that they have taken the credit; they have not utilized the credit. They have not availed any benefit as they have not utilised the said credit. Therefore, the demand of interest on the credit taken wrongly but lying unutilized and imposition of penalty are not warranted. He relies on the decision of the Tribunal in the case of CCE, Pondicherry vs. Superfil Products reported in 2009 (237) ELT 551 (Tri. Chennai), Pooja Forge Ltd., vs. CCE, Faridabad- 2004 (177) ELT 302 (Tri. Del.). In addition, he also relies on the decision of the Hon'ble High Court of Punjab and Haryana in the case of Ind-swift Laboratories Ltd., vs. Union of India reported in 2009 (240) ELT 328 (P&H) and the decision of the CCE, Delhi-III vs. Maruti Udyog Limited reported in 2007 (214) ELT 173 (P&H) in support of his submissions.

4. Learned DR submits that rule 14 of Cenvat Credit Rules envisage the payment of interest in respect of cenvat credit taken or utilized wrongly and that the provisions of Sections 11A and 11AB of the Central Excise Act shall apply *mutatis – mutandis* for effecting such recovery.

5. We have carefully considered the submissions made from both sides. In the present case, the appellants have apparently taken the credit which was not admissible to them. There is no dispute about reversal of the credit. It was submitted on behalf of the appellant that the credit wrongly taken has been reversed on being pointed out by the Department. The credit was not utilized as they were yet to commence production. Further, there is a clear finding by the Commissioner that the credit taken by the appellant has not been utilized, and the same has been reversed immediately on being pointed out by the Department. Under these circumstances, the question of applying provisions of Section 11A for demand of duty, short levy or non levy does not arise. Consequently, the question of recovery of interest for such short levy or non levy demand does not arise. It is not a case that the cenvat credit taken has been debited, thus utilizing the same for the purpose of paying excise duty due on clearances made by the appellant. In view of the above, the question of ordering recovery of interest for the credit lying in RG-23 account does not arise. There is no intention on the part of the appellant to evade duty and it is a clear case of misunderstanding of the provision and without deriving any benefit thereof. Under these circumstances, no penalty is also warranted.

6. In view of the above, we allow the appeal with consequential relief. The stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/