

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

Appeal No. E/694 /2006-SM[BR]

Date 01/02/2008

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


To :
CCE, CHANDIGARH
C.R.BUILDING, SECTOR-17C, CHANDIGARH

CCE, CHANDIGARH

M/S SURYA PHARMACEUTICALS LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.224/2008-SM[BR] dated 14.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S SURYA PHARMACEUTICALS LTD.
BANUR, DISTT. PATIALA (PB)

2. Adv. / Consult SHRI, HEMANT BAJAJ Adv.

A-5, BASEMENT LAJPAT NAGAR III NEW DELHI-24

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

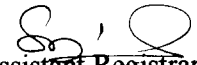
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.694/2006-SM

(Arising out of order in appeal No.419/CE/Chd/05 dated 30.11.05 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial)

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

yes

CCE Chandigarh

Appellant
(Rep. by Shri S. Gautam, SDR)

Vs

M/s Surya Pharmaceuticals Ltd

Respondent
(Rep. by Shri Hemant Bajaj, Advocate)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 14.1.2008

Final Order No. 224 /08 sm (BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The Revenue filed this appeal against the order of Commissioner (Appeals) whereby penalty imposed under Section 11AC of the Central

Excise Act was set aside. It is seen that on 12.12.2003, the Central Excise officers visited the respondent factory and detected shortage of raw material. The respondents in their statement stated that the shortage of the raw material was mainly due to evaporation losses over a period of time. They deposited the duty immediately upon detection of shortage. The adjudicating authority confirmed the demand of duty and appropriated the amount as deposited by them and also imposed penalty under Section 11AC of the Act. The Commissioner (Appeals) set aside the penalty as the duty was deposited before issuance of show cause notice.

3. I find that the Hon'ble Punjab & Haryana High Court in the case of CCE Ludhiana Vs Steel Strips Ltd reported in 2008 (221) ELT 193 held that assessee is not liable to pay penalty equivalent to duty for irregular availment of credit as there is no allegation of fraud or wilful mis-statement with intention to evade duty in the show cause notice. In the present case, shortage of raw material was detected on stock verification and respondent deposited the duty on the shortage of raw material. They have also explained the reasons for shortage. There is no willful misstatement or collusion with intention to evade payment of duty. Therefore, the Commissioner (Appeals) has rightly set aside the penalty. Accordingly, appeal filed by the revenue is rejected.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)