

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/1921/2006-SM[BR]

Date 27/03/2008

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

To :
M/S RECRON SYNTHETICS LTD (FORMERLY:
RAYMOND SYNTH
A/10-A/27, UPSIDC INDUSTRIAL AREA, KAILASH
NAGAR, KARCHANA, ALLAHABAD
211010

M/S RECRON SYNTHETICS LTD (FORMERLY:
RAYMOND SYNTH

Appellant

THE COMMISSIONER OF CENTRAL EXCISE
ALLAHABAD

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 482 /2008 -SM[BR] dated 15.1.2008

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
ALLAHABAD
38, MG ROAD, CIVIL LINE, ALLAHABAD 211001

2. Adv. / Consult

MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 -

Nidheshak publications, I.P.Estate, new Delhi


10. ~~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. *General File*


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**


Excise Appeal No.1921 of 2006-SM (BR)

[Arising out of order in appeal No.22/CE/ALLD/2006 dated 28.2.2006 passed by
the Commissioner (Appeals) Central Excise, Allahabad]

Date of Hearing/ Decision:15.1.2008

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? | : | |

M/s.Recron Synthetics Ltd.

Appellants
[Rep. by Mr. Ravi Raghvan, Advocate]

Vs.

CCE, Allahabad

Respondent
[Rep. by Mr. S. Gautam, SDR]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER NO. 422/08-S.M.(RR)/Dated: 15.1.2008

Per P.K. Das:

The appellant filed this appeal against imposition of penalty and payment of interest.

2. The adjudicating authority dropped the proceedings as the appellants deposited the duty before issue of show cause notice on irregular availment of credit. Revenue filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) imposed penalty of Rs.1,00,000/- and recovery of interest.

3. Ld. Advocate on behalf of the appellant submits that recovery of interest under Section 11 AB was inserted on 11th May, 2001. In this case, credits have been reversed prior to 11.5.2001 and, Section 11 AB of the Central Excise Act is not applicable. He further submits that the appellant availed irregular credit on bona fide manner and reversed the same before issue of the show cause notice and, penalty cannot be imposed. He relied upon the decision of the Punjab & Haryana High Court in the case of Commissioner of Central Excise Vs. Sigma Steel Tubes Ltd. Reported in 2007 (218) ELT 657 (P&H) and Commissioner of Central Excise, Ludhiana Vs. Steel Strips Ltd. reported in 2008(221) ELT 193 (P&H). He also cited several decisions of the Tribunal and the Hon'ble High Court.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant availed irregular credit and there is a contravention of the Rules and, therefore, imposition of penalty is justified.

5. After hearing both the sides and on perusal of the records, I agree with the submission of the ld. Advocate on recovery of interest. It is seen that the credits have been availed and reversed prior to 11.5.2001 and the recovery of interest under Section 11AB of the Act is not warranted. Regarding imposition of penalty, the ld. Advocate submits that in reply to the show cause notice, they have categorically stated that irregular availment of credit is in a bona fide manner. I find that the Commissioner (Appeals) imposed penalty on the ground of irregular availment of credit, without considering the submission of the appellant. The Hon'ble High Court and the Tribunal in a series of decisions held that duty deposited before issue of the show cause notice, penalty cannot be imposed under Section 11 AC of the Central Excise Act, 1944. The appellant availed the credit in bona fide manner and reversed the same before issue of the show cause notice, penalty cannot be imposed. I find that the Commissioner (Appeals) did not examine the submission of the appellant that they availed irregular credit bonafidely.

6. Accordingly, I set aside the impugned order insofar as the recovery of interest. Regarding the imposition of penalty, the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering submission of the appellant. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 15.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066

SINGLE MEMBER APPEAL BRANCH

Date : 19/08/2008

MISC Order No. 218 / 2008 -SM[BR]

Application E/ ROM /21 /2008 -SM[BR]

Appeal E/1921/2006-SM[BR]

1. Appellant

M/S RECRON SYNTHETICS LTD
(FORMERLY: RAYMOND SYNTH
A/10-A/27, UPSIDC INDUSTRIAL AREA,
KAILASH NAGAR, KARCHANA,
ALLAHABAD
211010

2. Respondent

THE COMMISSIONER OF CENTRAL
EXCISE ALLAHABAD
38, MG ROAD, CIVIL LINE, ALLAHABAD
211001

3. Adv / Consult :

MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW
DELHI-110029

4. C.D.R

5. Bar Association, CESTAT, New Delhi.

6. M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, Opp.
Sachdeva P.T. College of Defence Colony, New Delhi - 110003

8. Excise & Customs cases, B-37, Sector -1, Noida - 201301 (U P)

9. R.Venkatraman, Constt. 44B, S. Suncity, Ghaziabad - 201010, U.P.

10. Director Publications, Customs, Excise. I.P. Estate, New Delhi

11. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi
- 110026.

12. Co. Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 70

14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above
Star India Bazar, Satellite Road, Ahmedabad - 15

15. Office Copy

16. Guard File

Assistant Registrar

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 24.7.2008

Excise ROM Application No. 21/2008-SM(BR) in
Appeal No.E/1921/2006-SM(BR)

M/s Recron Synthetics Ltd

Appellants/Applicants

vs.

CCE Allahabad

Respondent

Appearance:

Shri Ganesh Baboo, Advocate for the Applicants/Appellant and
Shri A.K. Rastogi, DR for the Respondent

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

Misc Order No. 218 / 2008 - SM (BR)

Per: P.K. Das

Revenue filed this application for rectification of mistake in
Final Order No. 482/08-SM(BR) dated 15.01.2008.

2. By Final Order No. dated 15.01.2008, the Tribunal set-aside
the recovery of interest and regarding imposition of penalty, the
matter is remanded back to the Commissioner (Appeals) to decide
afresh after considering the submission of the Appellant.

3. In the instant application, the Revenue contended that the Tribunal observed that the credits have been availed and reversed prior to 11.5.2001 and demand of interest under Section 11 AB of the Act is not warranted. It is further contended by the Id. DR that the Appellant reversed the amount on 18.5.2002.

4. Ld. Advocate on behalf of the assessee had not disputed the error of the facts in the Final Order. However, he submits that due to mistake of the facts, the legal position would not be changed. He also submits that the assessee availed the credit prior to 11.5.2001, before insertion of Section 11 AB of the Act, which would be the crucial date for deciding recovery of the interest.

4. After hearing both the sides, it is seen that the Tribunal passed the order on wrong facts while setting aside recovery of interest. Therefore, the Final Order dated 15.01.2008, in so far as setting aside of the recovery of interest, is recalled.

5. In view of the above discussion, the Final Order No. 482/08-SM(BR) dated 15.1.2008, is amended. The words at paragraph 6, "Accordingly I set-aside the impugned order in so far as the recovery of interest" would be deleted and substituted by the

words, "As there is a dispute of facts of reversal of credit and applicability of the Section 11 AB of the Act, the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the facts and law of the case". The ROM application is disposed of in the above terms.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta