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

Date 31/10/2008

Appeal No. E/3562/2006 – SM[BR]

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.
C.C.E.CHANDIGARH

Appellant
Vs
Respondent

M/S DALMIA BISCUITS P.LTD

I am directed to transmit herewith a certified copy of **Final order No**. 1401 / 2008- **SM[BR]** dated 27.10.08 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 DALMIA BISCUITS P.LTD
   RAJPURA, DISTT- PATIALA(PB)
2. Adv. / Consult MS. ASMITA NAYAK ADV.
   N./V;-------------------------

3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagarava Road. T. Nagar.Chenna
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-
15 Office Copy
16 Guard file

Assistant Registra
(SM Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI, PRINCIPAL BENCH, COURT No.I

Excise Appeal No. 3562 of 2006-SM

(Arising out of order in appeal No. 771/CE/CHD/2006 dated 22.8.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh).

Date of Hearing: 27.10.2008

For approval and signature:

Hon'ble Mr. Justice S. N. Jha, President

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?	

CCE, Chandigarh Appellant
(Rep. by Shri S.K. Panda, Jt. CDR for the appellant)

Vs

M/s Dalmia Biscuits Pvt. Limited Respondent
(Rep. by Ms. Asmita Nayak, Advocate for the respondent)

Coram: Hon'ble Mr. Justice S. N. Jha, President

Final ORDER No. 1401/08-SM(BR)

Per : Justice S.N. Jha

The dispute in this appeal by the Revenue is limited to the imposition of penalty. The adjudicating authority confirmed the demand of Rs. 2,58,729/- with interest and also imposed penalty of equal amount with option as contemplated in Rule 11AC of the Central Excise Act. The respondent did not dispute the confirmation of demand. They challenged the order only as regards penalty. Commissioner (Appeals) took the view that as the respondent had paid the duty with interest before issuance of show cause notice, penalty was not imposable in view of the decisions in CCE, Delhi-III vs. Machino Montell (I) Ltd.,-2004 (62) RLT 709 (CESTAT-LB) and Rashtriya Ispat Nigam Ltd., vs. CCE-2003 (161) ELT 285 (T). The Revenue has come in appeal.

2. The dispute has arisen in the aftermath of Notification No. 8/2003-CE dated 01.03.2003 effective from 01.04.2003 giving certain exemptions to small scale industrial units. The exemption however was subject to the assessee's reversing the cenvat credit accumulated as on 31.03.2003. It is not in dispute that the respondents were entitled to take cenvat credit upto 31.03.2003 as the notification came into effect from 01.04.2003. The respondent in the ordinary course as per the terms of the notification should have reversed the credit as it opted to take the benefit of exemption. However, they did so only on 15.04.2003 after the audit pointed out the irregularity in course of the visit of the premises on 08.04.2003. The case of the respondent is that they could not do the needful as the records was not available. In the facts of the case, I am of the opinion that the credit taken by the respondent having been reversed much before issuance of show cause notice, it is not a fit case in which the Tribunal should interfere with the discretion exercised by the appellate authority in debiting of the penalty on the respondent.

3. The appeal is accordingly dismissed.

[Dictated and pronounced in the open Court]

[Justice S. N. Jha]
President

[Pant]