

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/305 /2007 – SM[BR]

Date 10/11/2008

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

To :
M/S ARADHANA SOFT DRINK CO

G T ROAD, PANIPAT.
CROPORATE OFFICE- 3 B, DLF CORPORATE PARK, S BLOCK, QUTAB
ENCLAVE, PHASE III, GURGAON [H.R.]
M/S ARADHANA SOFT DRINK CO

Appellant

Vs

Respondent

C.C.E.DELHI III GURGAON

I am directed to transmit herewith a certified copy of Final order No. 1427 / 2008 – SM[BR] dated 5.9.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E.DELHI III GURGAON

UDYUOG VIHAR, UDYHOG MINAR, VANIJYA NIKUNJ, PHASE-V, GURGAON.

2. Adv. / Consult MS. NANDITA KASHYAP, LEGAL MANAGER
M/S APPELLANS;-----

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 Publications (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, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

15 Office Copy

16 Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.305 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.288/NS/RTK/2006 dated 12.10.2006
passed by the Commissioner of Central Excise (Appeals), Delhi-III]

Date of Hearing/ Decision:05.09.08

For approval and signature:

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

- | | | |
|--|---|-----|
| 1. Whether Press Reporters may be allowed to see 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? | : | M |
| 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 |

Ms. Aradhana Soft Drink Co. ...Appellants
[Rep. by Ms. Nandita Kashyap, Legal Manager]

Vs.

CCE, Delhi-III ...Respondent
[Rep. by Shri K.K. Goyal, Jt. CDR]

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

Final Order No. 1427/08-SM (BR) /Dated:05.09.2008

Per P.K. Das:

The Appellant filed this appeal against imposition of penalty of
Rs.1,96,029/-.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of "Aerated Water" and "Fruit Pulp or Fruit Juice" based drinks classifiable under sub-headings Nos.2202.20 and 2204.40 of the Schedule to the Central Excise Tariff Act, 1985. It has been alleged that the Appellant availed credit on damaged goods. It has further been alleged that the inputs used in the aerated water was used in the manufacture of exempted goods. The Appellant paid the duty along with interest voluntarily upon detection by the Central Excise Officers during their visit. The Adjudicating Authority confirmed the demand of duty and appropriated the said amount as already deposited by the Appellant. He also imposed penalty of equal amount under Rule 13 of the Cenvat Credit Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944 and also appropriated the interest as already deposited by the Appellant. The Commissioner (Appeals) modified the Adjudication Order in so far as payment of interest was set aside. The appellant filed this appeal against imposition of penalty under Section 11 AC of the Act.

3. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) observed that the Cenvat Credit involved in the present case was never utilised by the Appellant and the recovery of interest was set aside. The main contention of the Id. Jt. CDR that the Central Excise Officers detected during their visit that the Appellant used the treated water in the manufacture of exempted goods.

He further submits that the utilisation of the credit is irrelevant. I do not find any force in the submission of the ld. Jt. CDR.

4, The Tribunal in the case of Commissioner of Central Excise Vs. Jay Bee Woollen Mills reported in 2008 (226) ELT 595 (Tribunal-Delhi) held as under:-

“Case of the Revenue is that the respondents wrongly availed deemed credit and, when it was pointed out to the respondents the same had been debited. Contention of the Revenue is that, as the respondents has wrongly availed deemed credit they are liable to penalty. I find that in this case there is no evidence or allegation in the show cause notice that the respondents availed wrong deemed credit with an intention to evade payment of duty. Hon’ble Punjab & Haryana High Court in the case of CCE, Ludhiana Vs. Steel Strips Ltd. reported in 2008 (221) ELT 193 (P&H) has held that in case the credit was taken wrongly but not utilised and there is no evidence that the same has been done with an intention to evade payment of duty, penalty is not imposable. IN view of the above, I find no infirmity in the impugned order. Therefore, appeal is dismissed.”

5, In case of Bombay Dyg. & Mfg. Co. Ltd. Vs. CCE, Mumbai-IV reported in 2007 (215) ELT 433 (Tribunal-Mumbai), it has been held that the Appellant reversed entire credit without utilising it, hence it cannot be said that they availed it and penalty under Section 11 AC and interest under Section 11 AB of the Central Excise Act, 1944 are not warranted. In the present case, the Commissioner (Appeals) set aside the payment of interest as the Appellant has not utilised the Credit. No dispute was raised by the Revenue.

In view of that, the imposition of penalty under Section 11AC is not justified. Accordingly, the impugned order, in so far as imposition of penalty, is set aside. The appeal is allowed.

Order dictated & pronounced in open court on 5.09.08.

(P.K. Das)
Member (Judicial)

Ckp.