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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

Appeal No. E/3890/2006-SM[BR] Date 03/07/2008

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

To :
U.P.STATE SUGAR CORPORATION LTD
SAKOTI TANDA, DISTT- MEERUT.
250223

U.P.STATE SUGAR CORPORATION LTD Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1036 /2008-SM[BR] dated 29.5.2008 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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 Delhi -
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), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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.3890/06-SM

(Arising out of order in appeal No.185-186/CE/Appl/MRT.I/06 dated 20.9.06 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

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?

No

M/s UP State Sugar Corporation Ltd — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Meerut-I — Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 29.5.08

Final Order No. 1036 /2008-SM(BR)

Per **P.K. Das**:

The Appellants are engaged in the manufacture of VP Sugar and Molasses classifiable under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. They availed Cenvat credit on capital goods namely MS

Plates, HR Sheets, Angles and Channels, etc. The Adjudicating Authority disallowed credit amounting to Rs. 2,41,255/- and imposed penalty of equal amount under Rule 13 of the Cenvat Credit Rules, 2002 alongwith interest. The Commissioner (Appeals) modified the Adjudication order and reduced the demand from Rs. 2,41,255/- to Rs.22,103/- and imposed penalty of equal amount.

2. The learned Advocate submits that after receipt of the Adjudication order, the Appellants reversed the amount of Rs.22,103/-. He further submits that the Appellants had not utilized the credit and therefore, penalty and interest are not sustainable. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE Delhi-III Vs. Maruti Udyog Ltd reported in 2007 (214) ELT 173 (P&H) and the decision of the Tribunal in the case of Bombay Dyeing & Manufacturing Co. Ltd Vs CCE, Mumbai-IV reported in 2007 (215) ELT 433 (Tri.-Mum).

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the Appellants availed credit on the Iron and Steel products used in Civil Construction which is not admissible to them and therefore, they are not liable to pay interest alongwith penalty. He further submits that the Appellants had wrongly taken Modvat credit and there is contravention of the Rules. So, the Appellants are liable to penal action under the Rules.

4. After hearing both the sides and on perusal of the record, I find that the Adjudicating Authority disallowed credit of Rs.2,41,255/- on the Iron and Steel Products as inadmissible credit. The Commissioner (Appeals) after examining the use of these items, disallowed credit to Rs.22,103/-. I find that after receipt of the Adjudication order, the appellants reversed the

credit. It is seen that there was a dispute in admissibility of credit which was modified by the Commissioner (Appeals) and reduced the amount from Rs.2,41,255/- to Rs.22,103/- and they have not utilized the credit. It is contended by the Appellants that they have taken credit in the month of March/April, 2005 and reversal made in November, 2005 and they have not utilized the credit. The Tribunal in the case of Bombay Dying & Manufacturing Co Ltd (Supra) held that assessee reversed the credit without utilizing it in a case of wrong availment of credit and therefore, penalty and interest are not imposable.

6. In view of the above discussion, I find that when the credit has not been utilized and also reversed after receipt of the Adjudication order, imposition of penalty and interest are not warranted. Accordingly, penalty and interest are set aside. The Appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*