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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/3155/2006-SM[BR] Date 22/08/2008

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

To :
M/S SOCOMAC HPL PVT LTD.
756,PACE CITY II,SECTOR 37,GURGAON.

M/S SOCOMAC HPL PVT LTD. Appellant
Vs
C.C.E.DELHI III GURGAON Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1157 / 2008 –SM [BR] dated 24.7.2008 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
   UDYOG MINAR,UDYOG VIHAR,VANIJYA NIKUNJ,PHASE-V,GURGAON.
2. Adv. / Consult
   MR.D.N. MALHOTRA
   18, SHIVPURI, SAINT MICHEAL, HIGH SCHOOL ROAD, GURGAON-122001.
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. 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
(SM Appeal Branch)

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

Excise Appeal No.3155 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.179/NS/GGN/2006 dated 28.06.2006 passed by the Commissioner of Central Excise (Appeals), Delhi]

Date of Hearing/ Decision:24.07.2008

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? :
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. Socomac HPL Pvt. Ltd. ...Appellants
[Rep. by Shri D.N. Malhotra, Advocate]

Vs.

CCE, Delhi-III ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No. 1157/2008-SM(BR) Dated:24.07.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants availed full Cenvat Credit (i.e.100%) on the capital goods in the same financial year. Upon detection by the Central Excise Officers, they reversed 50% Credit in the same financial year. The Adjudicating Authority confirmed the demand of duty of Rs.1,15,596/- and appropriated the amount as deposited by them. He imposed a penalty of Rs.1,00,000/- under Rule 13 of Cenvat Credit Rules and also recovery of interest under Section 11 AB of the Central Excise Act, 1944. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate submits that the Appellant has not utilised the credit as revealed from the Adjudication Order and, therefore, imposition of penalty and recovery of interest are not justified. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Vadodara-II Vs. Interplex (India) Pvt. Ltd. reported in 20007 (211) ELT 228 (Tribunal-Ahmd.)

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Appellant irregularly availed the Credit and, therefore, interest and penalty are justified. He further submits that the case laws relied upon by the ld. Advocate is in connection with the imposition of penalty under Section 11 AC of the Central Excise Act, 1944.

4. After hearing both the sides and on perusal of the records, it is revealed from the Adjudication Order that the Appellant did not utilise the excess Credit. It is observed by the Adjudicating Authority that there was no production and clearance of the goods during the relevant period. Ld. Advocate submits that it is a new factory and the production was not

yet started during the relevant period. The Tribunal in the case of Interplex (India) Pvt. Ltd. (supra) held that 100% Credit taken in the same financial year and the credit was reversed on being pointed out by the Department, which was not utilised by the assessee, imposition of penalty and recovery of interest are not sustainable.

5. In the present case, the Adjudicating Authority accepted that the Appellant had not utilised the Credit and demand of interest is not justified. I agree with the submission of the ld. DR that there is a violation of the Rules and, therefore, minimum penalty should be imposed. But, in the present case, the Appellant is a newly started factory and the production has not yet been started. Therefore, considering the facts and circumstances of the case, I find that the Appellant should be cautioned for such violation of the rules and no penalty is warranted. In view of the above discussions, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 24.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.