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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/46 /2007 – SM[BR] Date 19/11/2008

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

To :
M/S SOMAIYA ORGANICS (I) LTD
(NOW M/S J.R.ORGANICS LTD) CAPITANGANJ
DISTILLERY, DISTT- KUSHINAGAR(UP)
M/S SOMAIYA ORGANICS (I) LTD Appellant

Vs

C.C.E.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1487 / 2008- **SM[BR]** dated 2.9.2008 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.ALLAHABAD
38, M.G. MARG, CIVIL LINES, ALLAHABAD.
2. Adv. / Consult
MR.S.P. OJHA
299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)
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). Thyagaraya Road. T. Nagar.Chennai
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-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.46 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.101/CE/Appl/2006 dated 29.08.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:02.09.08

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.		No
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?	:	Yes

M/s. Somaiya Organics (I) Ltd. ...Appellants
[Rep. by Shri S.P. Ojha, Consultant]

Vs.

CCE, Allahabad ...Respondent
[Rep. by Shri K.K. Goyal, Jt. CDR]

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

Final Order No. 1487/08-SM (BR) /Dated:02.09.2008

Per P.K. Das:

The Appellants filed this appeal against demand of interest of Rs.4,57,984/- under Section 11 AB of the Central Excise Act, 1944.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Ethyl Alcohol and Denatured Ethyl

Alcohol classifiable under sub-heading NO.2204.10 of the First Schedule to the Central Excise Tariff Act, 1985. It was noticed that the Appellants manufactured Ethyl Alcohol, which was used in captive consumption by their other unit viz. M/s. Somaiya Organics (I) Ltd., Barabanki. It was also noticed that he Appellants paid the duty on captive consumption at a lower price compared to the same goods manufactured by the other units. The Appellant paid the differential duty of Rs.8,64,701/- vide Entry No.2256 and 2257, both dated 27.07.2001 for the period 15th April, 2000 to 31st March, 2001. A show cause notice dated 18.07.2005 was issued proposing the demand of interest of Rs.4,57,984/- for contravention of Rules 6(B) (1) of the Central Excise Valuation Rules, 1975 and penalty for contravention of the said Rules. The Adjudicating Authority confirmed the demand of interest under Section 11 AB of the Act, which has been upheld by the Commissioner (Appeals).

3. Ld. Counsel on behalf of the Appellant submits that the Appellant paid the differential duty on 27.07.2001 and, therefore, the demand of interest under Section 11 AB of the Act is not sustainable. He further submits that the demand of interest, prior to 11.5.2001 i.e. on the date when the Finance Bill, 2001 was given assent by the President, under Section 11 AB of the Act, is not sustainable. He relied upon the decision of the Tribunal in the case of Ruby Mills Ltd. Vs. CCE, Raigad reported in 2007 (217) ELT 245 (Tribunal-Mumbai).

4. Ld. DR on behalf of the Revenue submits that the Appellant deliberately suppressed the value of the goods and, therefore, demand of interest under Section 11 AB of the Act as enacted in the year 1996 is sustainable. He further submits that the Appellant did not add the cost of denaturants (Acetaldehyde) being supplied to M/s. Somaiya Organics Ltd. He further submits that it is clear case of evasion of duty and, therefore, demand of interest is justified. He relied upon the decision of the Hon'ble Bombay High Court in the case of Commissioner of Central excise and Customs Vs. M/s. Padmashri V.V. Patil Sahakari Sakhar Karthana Ltd. reported in 2007-TIOL-419-HC-MUM-CX, which has been upheld by the Hon'ble Supreme Court as reported in 2008 (224) ELT A-34 (SC).

5. After hearing both the sides and on perusal of the records, it is revealed from the show cause notice that the Appellant removed Ethyl Alcohol captivity consumed by the other unit, M/s. Somaiya Organics (I) Ltd., Barabanki. As per new Valuation Rules, effective from 1.7.2000, they are liable to pay the duty on the valuation at 115% of the cost of production. It is seen that during the period 15th April, 2000 to 31st March, 2001, they paid the duty on captive consumption under the new Valuation Rules. On scrutiny of the cost of the final products, it was found that they did not add the cost of denaturants and the assessable value was ascertained to Rs.14.72 per litre instead of Rs.14.50 per litre as

added by the Appellant. They have immediately paid the differential duty on 27.07.2001. After about 5 years, the show cause notice was issued for payment of interest. On perusal of the show cause notice, I do not find any material that the Appellant suppressed the facts with intent to evade payment of duty. There is no such allegation in the show cause notice. The ld. DR drew the attention of the Bench to the order of the Commissioner (Appeals), wherein it has been observed that there was deliberate suppression of the facts on the part of the Appellant in so far as disclosure of facts and short payment of duty for such a long period, i.e. 15.04.2000 to 31.03.2001. It is seen that the payment of duty under new Valuation Rules effective from 1.7.2000 provides that valuation shall be made at 115% of the cost of production. It may be an error in the cost of the product and the Appellant immediately paid the differential duty. The error was detected on scrutiny of the records. Therefore, the contention of the ld. DR that the Appellant deliberately suppressed the facts appears to be not sustainable. Ld. DR strongly relied upon the decision of the Bombay High Court in the case of M/s. Padmashri V.V. Patil Sahakari Sakhar Karthana Ltd. (supra). In that case, the question of law before the Hon'ble Court was as under:-

> "(1) Whether there is any discretion with the authorities to exempt penalty under Section 11 AC and interest under Section 11-AB of Central Excise Act,

1944, while confirming the demand for evaded excise duty?

(2) Whether such exemption can be justified merely because the evaded excise duty is paid before issuance of show cause notice by the department?

6. In the present case, it has been discussed that there is no evasion of duty. The Adjudicating Authority also refrained from imposition of penalty, which was not challenged by the Revenue before the Appellate Authority. Thus, the said decision is not applicable herein. The Tribunal in the case of Ruby Mills Ltd. (supra) set aside the recovery of interest under Section 11 AB of the Act in respect of demand of interest for ineligibility of Cenvat/Modvat Credit for the period prior to 11.5.2001 i.e. on the date when Finance Bill, 2001 was given assent by President. In the present case, the period of dispute is 15^{th} April, 2000 to 31^{st} March, 2001 and, therefore, the demand of interest is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 2.09.08.

(P.K. Das)
Member (Judicial)

Ckp.