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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/2943/2006-2944/2006-SM[BR] Date 19/05/2008

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

To :
C.C.E. JAIPUR II
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR

C.C.E. JAIPUR II Appellant
Vs
M/S SHREE PET Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 782 -783 /2008 –SM[BR] dated 2.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S SHREE PET
   E-7,INDUSTRIAL AREA,PARBHATPURA-MUKHUPURA EXTN,AJMER(RAJ)
2. Adv. / Consult SHRI DEBOSI GHOSH CONSULTANT
   M/S RESPONDENT;----------

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

2 M/S SHREE BEVERAGE.
E-9,INDUSTRIAL AREA,PARBHATPURA-MAKHUPURA EXTN,AJMER(RAJ)

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeals No.2943 & 2944 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.364-365(HKS) CE/JPR-II/2006 dated 12.06.2006 of the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing:2.5.2008

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?	:	NA.
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, Jaipur ...Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. Shree Pet ...Respondent
[Rep. by Shri Debosis Ghosh, Consultant]

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

Final Order No. 782-783/08-SM(BR)/Dated:2.5.08

Per P.K. Das:

Common issue involved in both the appeals. Therefore, both are taken up together for disposal.

2. Revenue filed these appeals against the Order of the Commissioner (Appeals), whereby penalties of Rs.25,000/- under Rule 15 of Cenvat Credit Rules, 2004 and Rs.1,17,416/- under Section 11 AC of the Central Excise Act, 1944 were set aside.

3. Ld. DR on behalf of the Revenue submits that the Respondents had not submitted the copies of the invoices along with Returns. The burden of admissibility of Cenvat Credit lies upon them, which they failed to discharge. He also submits that the Respondent have wilfully taken excess Cenvat Credit, which is inadmissible on the basis of invoices of the supplier. He reiterates the grounds of appeal.

4. Ld. Counsel on behalf of the Respondent submits that the dispute relates to interpretation of Rules, which has been decided in favour of the Respondent by the Tribunal in the case of Emcure Pharmaceuticals Ltd. Vs. CCE, Pune reported in 2008-TIOL-226-CESTAT-MUM. He further submits that the Respondent already deposited the entire amount of duty with interest and, therefore, there is no reason for imposition of penalties.

5. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) set aside the penalties as the issue involved in these cases relates to interpretation of provisions of Rules 3 (7) (a) of the Cenvat Credit Rules, 2004. I find that the Tribunal decided this issue in favour of the Respondents in the case of Emcure Pharmaceuticals Ltd. (supra). In any event, the Respondents are not disputing the payment of duty. Ld. Counsel also submits that they have deposited the duty with

interest. Therefore, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 2.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.