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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/1450/2007 – SM[BR] Date 21/05/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
M/S SHAJ CERCHEM (P) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 444 / 2009 –SM[BR] dated 30.4.2009 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 SHAJ CERCHEM (P) LTD
75, INDUSTRIAL ESTATE, NUNHAI, AGRA
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 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.1450 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.100-CE/APPL/KNP/2007 dated 22.03.2007 passed by the Commissioner of Central Excise (Appeals), Kanpur].

Date of Hearing/ Decision:30.04.09

For approval and signature:

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

3. 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? : No

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.

CCE, Kanpur ....Appellants
[Rep. by Shri R.K. Verma, DR]

Vs.

M/s. Sahaj Cerchem (P) Ltd. ...Respondent
[Rep. by Shri Bipin Garg, Advocate]

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

Final Order No. 444/09-SM(BR)/Dated:30.04.2009

Per P.K. Das:

Revenue filed this appeal against the Order of the Commissioner (Appeals), whereby penalty of equal amount of duty of Rs.97,969/- was set aside.

2. After hearing both the sides and on perusal of the records, it is seen that the respondent availed credit on M.S. Fabricated Structure and other accessories under the head of capital goods. The Central Excise Officers during the verification of the records, detected the availment of credit and on being pointed out by the said officers, the respondent reversed the credit of Rs.97,969/- on 18.04.2005. Thereafter, a show cause notice dated 7.4.2006 was issued proposing to appropriate the amount deposited by the respondent and to impose penalty. The Original Authority confirmed the demand of duty and appropriated the amount as deposited by the respondent. He also imposed penalty of equal amount under Rule 25 of the Central Excise Rules, 2002. The Commissioner of Central Excise (Appeals) set aside the penalty. Hence, the Revenue filed this appeal.

3. Ld. DR reiterated the grounds of appeal. He submits that the respondent knowing fully well availed the irregular credit and, therefore, the penalty is justified. He also submits that the respondent did not reverse the credit voluntarily. In other words, it was detected by the Central Excise Officers during the verification of the records.

4. Ld. Advocate reiterated the findings of the Commissioner (Appeals). He submits that the Tribunal in the case of M/s. Divi's Laboratories Ltd. Vs. CCE, Vishakhapatnam – 2006 (196) ELT 285 (Tribunal-Bang.) held that the credit is available on structural items. He fairly submits that they are not contesting the demand of duty, which they have already deposited at the time of verification of the records by the Central Excise Officers. He also submits that the show cause notice was issued about after one year of the reversal of the credit. He also submits that the respondent had not utilised the credit.

5. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) set aside the penalty on the ground that the respondent deposited the duty before issue of show cause notice. In

my view, penalty cannot be set aside only on the ground that the duty was deposited before issue of show cause notice. It is settled law that the penalty is imposable after considering the facts and circumstances of the case. In the present case, it is seen that the respondent availed the credit on structural items and they have not utilised the credit as recorded in the order of the Commissioner (Appeals). It is seen that the Revenue has not refuted this fact in the grounds of appeal. It is seen that during the relevant period, there was a doubt regarding the availment of credit on the structural items. I find that there was a dispute in interpretation of the provisions of law, imposition of penalty is not warranted. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 30.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.