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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/1768 & 2603 / 2007& 1769 &2600 / 2007 –SM[BR] Date 21/05/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S MEHTA GROUP OF INDS. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 448 - 451 / 2009 –SM[BR] dated 12.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S MEHTA GROUP OF INDS.
   2. M/S MEHTA GROUP INDUSTRIES F-177 A,K MANDIA ROAD, PALI, RAJASTHAN
   [3]M/S ARUNA TEXTILE MILLS F- 200-A, MADIA ROAD, PALI [RAJ.]
   [4] M/S ARUNA TEXTILE MILLS, F-200-A, MANDIA ROAD, PALI [MARWAR]

2. Adv. / Consult SHRI BIPIN OF 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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals Nos.1768 & 2603 of 2007 &
1769 & 2600 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.237 (HKS)CE/JPR-II/2007 dated 28.03.2007 in Appeals Nos.E/1768 and 2603 of 2007-SM (BR) and Order-in-Appeal No.238(HKS)CE/JPR-II/2007 dated 28.03.2007 passed by the Commissioner of Central Excise (Appeals-II), Jaipur]

Date of Hearing/ Decision:12.05.09

For approval and signature:

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

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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? : 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

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Appeal No.E/1768 of 2007-SM (BR)

CE, Jaipur ...Appellants

Vs.

M/s.Mehta Group of Industries ...Respondent

Appeal No.E/2603 of 2007-SM (BR)

M/s. Mehta Group of Industries ...Apppellant

Vs.

CCE, Jaipur ...Respondent

Appeal No.E/1769 of 2007-SM (BR)

CCE, Jaipur-II ...Appellant

Vs.

M/s. Aruna Textile Mills ...Respondent

Appeal No.E/2600-SM (BR)

M/s. Aruna Textile Mills ....Appellant

Vs.

CCE, Jaipur-II .....Respondent

Shri M.M. Singh, DR represented the Department
Shri Atul Gupta, Chartered Accountant represented the parties.

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

Final Order No. 448 to 451/09 - SM(BR) /Dated:12.05.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the assessees are engaged in the manufacture of processed fabrics and man made fabrics. Notification No.25/2003-CE (NT) dated 25.3.2003 allowed credit on specified inputs/ in-process/finished goods lying in stock as on 31.3.2003. The assessee availed credit including the processing charges on the value of the inputs. Subsequently, they reversed the credit on processing charges in April, 2005 for Rs.76,217/- and Rs.88,368/- by the assessees viz. M/s.Mehta Group of Industries and M/s. Aruna Textile Mills respectively. Show cause notices both dated 24.11.2005 were issued proposing to appropriate the amount deposited by the them and to impose penalty and interest. The Original Authority appropriated the amounts deposited by them and refrained from imposition of penalty and payment of interest. Revenue filed appeals before the Commissioner (Appeals) for imposition of penalty and payment of interest. The Commissioner

(Appeals) imposed penalty of equal amount of duty and refrained from recovery of interest. Hence, the assessees filed these appeals against imposition of penalty. Revenue filed these appeals for recovery of interest.

2. After hearing both the sides and on perusal of the records, I find that the Tribunal in the case of B.B. Shah (P) Ltd. Vs. CCE-II, Jaipur reported in 2008 (224) ELT 154 (Tribunal-Delhi) held that one time credit on specified inputs lying in stock as on 31.03.2003 under Rule 9A(2) of Cenvat Credit Rules, 2002, the processing charges would not be included in the value of the inputs and credit would be disallowed thereon. The Tribunal upheld the disallowance of the credit on the value of inputs of the processing charges and set aside the penalty. In the present case, the assessees voluntarily reversed the credit on the processing charges and, therefore, the imposition of penalty is not warranted.

3. Regarding the recovery of interest in the appeals filed by the Revenue, I find that the Commissioner (Appeals) observed that the assessees had not utilised the wrongly taken Cevant Credit. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Delhi Vs. M/s. Maruti Udyog Limited reported in 2007 (214) ELT 173 (P&H) held that the assessees are not liable to pay interest as the credit was taken as an entry and was not infact utilized. In the present case, it is seen that the assessees had not utilised the credit and, therefore, the recovery of interest is not sustainable.

4. In view of the above discussions, the appeals filed by the assessees are allowed and the penalties are set aside. The appeals filed by the Revenue are rejected.

Order dictated & pronounced in the open court on 12.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.