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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/1807/2007 – SM[BR] Date 05/06/2009

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

To :
M/S DEY'S MEDICAL (U.P.) PVT. LTD.

NAINI, ALLAHABAD (U.P.)

M/S DEY'S MEDICAL (U.P.) PVT. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 540 / 2009 –SM[BR] dated 14.5.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

   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. 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.1807 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.76/CE/Alld/2007 dated 12.04.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Date of Hearing/ Decision:14.05.2009

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? : 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

M/s. Dey's Medical (P) Ltd. ...Appellants
[Rep. by Shri S.P. Ojha, Consultant]

Vs.

CCE, Allahabad ...Respondent
[Rep. by Shri R.K. Verma, DR]

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

Final Order No. S 40/09 - SM (BR)/Dated:14.05.2009

Per P.K. Das:

Ld. Advocate submits that they have filed this appeal against payment of interest and imposition of penalty of Rs.10,000/-. He submits that they have taken credit of Rs.14,030/- on the basis of photocopy of the invoices by mistake. Subsequently, they have reversed the credit. Show cause notice was issued proposing to appropriate the amount as deposited by them and to impose penalty and interest. The Original Authority appropriated the amount reversed by them and imposed penalty of equal amount of duty of Rs.14,030/- along with interest. The Commissioner (Appeals) reduced the penalty to Rs.10,000/-.

2. After hearing both the sides and on perusal of the records, I find that the main contention of the ld. Counsel is that the appellants have not utilised the credit as evident from the reply to the show cause notice as well as they have submitted the Chartered Accountant's certificate. Further, the Commissioner (Appeals) observed that there is no suppression or malafide intention to evade payment of duty. Hence, imposition of penalty under Rule 13(2) of the Cenvat Credit Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944 is not sustainable. It is well settled that the credit taken, but not utilised, is not liable to pay the interest.

3. In the present case, I find that the appellants categorically stated before the Original Authority that they have not utilised the credit, which was not refuted in the impugned order. It is noted that they have taken credit wrongly and debited voluntarily and, therefore, imposition of penalty is justified. In view of that, interest and penalty are not sustainable. Accordingly, the payment of interest and penalty are set aside. The appeal is allowed.

Order dictated & pronounced in open court on 14.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.