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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/1503/2007 – SM[BR] Date 18/06/2009

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

To :
M/S PEARL DRINKS LTD.
B-42, LAWRENCE ROAD, INDUSTRIAL AREA, DELHI
110035.

M/S PEARL DRINKS LTD. Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 585 / 2009 SM[BR]** dated 9.6.2009

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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SHRI J.S. NEGI, GENERAL MANAGER
   M/S APPELLANT;-----------------

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
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Assistant Registrar
(SM Appeal Branch)

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

Appeal No.E/1503 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.06/CE/DLH/2007 dated 08.02.2007 passed by the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:9.6.2009

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? : 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? : Yes

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M/s. Pearl Drink Ltd. ...Appellant

[Rep. by Shri J.S. Negi, General Manager of the Company]

Vs.

CCE, Delhi-I ...Respondent

[Rep. by Shri R.K. Verma, DR]

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

Final Order No.585/09-SM(BR)/Dated:09.06.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Aerated Water and Beverage Syrup classifiable under Sub-Headings Nos.2202.20 and 2108.10 of the Schedule to the Central Excise Tariff Act, 1985. They availed Cenvat

Credit on Basic Excise Duty on the basis of the invoices issued by the Registered Dealer during the period from 1.4.2000 to 9.10.2000. By Board's Circular No.700/16/2003-CX. It is clarified that the credit of Additional Duty (GSI) accrued earlier (prior to 1.3.2003) can be used for payment of Cenvat duty. Section 88 of the Finance Act(No.2), 2004 provides that Cenvat credit shall be allowed on such Additional Duty of Excise leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) at 1957, which has been disallowed but which would not have been disallowed, if the amendment made by sub-section (1) was imposed at all material times. Hence, the appellant availed credit of Rs.9,20,944/- vide RG-23A Part-II Entry Sl.No.548 dated 10.07.2004 on Additional Excise Duty (GSI) in respect of the inputs received during the period 1.4.2000 to 9.10.2000. The Original Authority disallowed the credit and imposed penalty of equal amount under Section 11 AC of the Central Excise Act along with interest. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Representative of the appellant submits that the appellant availed the credit on Basic Excise Duty during the period 1.4.2000 to 9.10.2000 on the goods accompanied with dealer's invoice. He submits that during that relevant period,, there was no provisions to avail credit on Additional Excise Duty (GSI) and, therefore, the dealers had not mentioned the AED(GSI) in their Excise Records. But they have paid AED (GSI) to the dealer. He also submits that the appellant availed the

credit on the basis of the manufacturer's invoices linked with dealer's invoices. Therefore, the finding of the Commissioner that Credit was taken without proper documents is not correct. He also drew the attention of the Bench to the relevant provisions on availment of AED(GSI).

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that there is no dispute that the appellants are eligible to avail credit on AED (GSI) in view of the amendment of the Rules. The main contention of the ld. DR is that the appellant failed to produce any evidence in support of their credit in RG-23 A Part-II Register. He also submits that the dealer also did not mention in their invoices the AED (GSI). He also submits that in terms of Rule 9 of Cenvat Credit Rules, 2004, the appellant is liable to take the credit on the basis of the documents. In the present case, the appellants have not produced any documents in terms of Rule 9 of the Rules.

4. After hearing both the sides and on perusal of the records, I find that the eligibility of credit of AED(GSI) by the appellants is not disputed by the Revenue. The dispute is that the credit was taken without proper duty paying documents as required under Rule 9 of the Cenvat credit Rules, 2004. In the present case, the appellants availed the credit on the basis of dealer's invoices as prescribed under Rule 9 of the Rules. Admittedly, the dealer's invoices are not showing the payment of AED(GSI).

5. I find that in terms of the Board's Circular dated 6.3.2003, the Additional Excise Duty (GSI)accrued prior to 1.3.2003 can be used for payment of Cenvat credit. The appellants failed to produce proper duty paying documents in respect of payment of AED(GSI). The Representative contended that the dealer's invoices indicated the value of the goods higher than that in the primary invoices of the manufacturer. It is his contention that the manufacturer's invoices could establish the payment of AED(GSI). I am unable to accept the contention of the ld. Representative of the appellant. I find that credit would be eligible on the basis of duty paying documents as prescribed in the Rule 9 of the Rules. The documents in this case are the dealers' invoice. Admittedly, there is no mention of the payment of GSI in the dealer' invoice and, therefore, the Commissioner (Appeals) rightly disallowed the credit. However, I agree with the submission of the ld. Representative that in the instant case, there is no suppression of fact with intent to evade payment of duty and, therefore, imposition of penalty under Section 11 AC is not warranted. In view of the above discussion, demand of duty and interest are upheld. Penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 9.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.