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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
M] **SINGLE MEMBER APPEAL BRANCH**

Appeal No. E/2105/2007 – SM[BR] Date 26/06/2009

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

To :
M/S SHAKUMBHRI PRODUCTS LTD.
VILLAGE DEVRI, TEHSIL BILARI, MORADABAD, U.P.

M/S SHAKUMBHRI PRODUCTS LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No 626 / 2009 –SM[BR]**. dated 5.6.2009 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.R.C.GUPTA , ADV
   LEGUM JIRIS, (A LAW FIRM), "AASHIRWAD" #557, SECTOR-19, FARIDABAD(HR)
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 Appeal No.2105 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.80-CE/MRT-II/2007 dated 30.03.2007 passed by the Commissioner of Central Excise (Appeals), Meerut (U.P.)]

Date of Hearing/ Decision:5.6.2009

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.		No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	
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. Shakumbhri Straw Products Ltd. ...Appellants
[Rep. by Shri R.C. Gupta, Advocate]

Vs.

CCE,Meerut ...Respondent
[Rep. by Shri Sansar Chand, DR]

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

Final Order No...626/09-SM(BR)../Dated:05.06.2009

Per P.K. Das:

The appellant filed this appeal against payment of interest of Rs.1,94,867/- and penalty of Rs.10,000/-.

2. After hearing both the sides and on perusal of the records, I find that the appellants during the period July, 2002 to September, 2003 taken Cenvat Credit of Rs.8,70,515/- on waste cloth. They reversed the entire credit on 21.09.2004 vide RG-23A Part-II Sl.No.510 and 511 both dated 21.09.2004. A show cause notice dated 19.01.2006 was issued for payment of interest and imposition of penalty. The Original Authority confirmed the demand of interest of Rs.1,94,867/- under Section 11 AB of the Central Excise Act, 1944 and imposed penalty of Rs.10,000/- under Rule 13 of the Cenvat Credit Rules, 2002. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Advocate drew the attention of the Bench to the order of the Commissioner (Appeals), wherein it is observed by the Commissioner (Appeals) that it is an admitted fact of this case that nearly six months, the appellant continued to take in-admissible Cenvat credit and accumulated the same in their book of accounts and only after being pointed out by the Department they reversed the credit. He submits that the appellants had not utilised the credit and, therefore, the payment of interest is not sustainable.

4. In this context, ld. DR submits that the Rule prescribed the payment of interest on taking of the credit. I find that the Tribunal in the case of Lafarge India Pvt. Ltd. reported in 2008 (85) RLT 832 (CESTAT-

Delhi) held that interest is not leviable when wrongly taken credit has not been utilised under Rule 12 of Cenvat Credit Rules 2001/2002.

5. In view the above discussions, I find that the demand of interest is not justified as the appellant had not utilised the Cenvat Credit. Further, t the appellant voluntarily reversed the credit and, therefore, imposition of penalty is also not warranted. Accordingly, the demand of interest and penalty are set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 5.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.