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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**

Date 07/08/2009

Appeal No. E/2338/2007 – SM[BR]

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

To :
DHAMPUR SHUGAR MILLS LTD.
DHAMPUR NORTH, DISTT. BIJNOR(U.P.)

DHAMPUR SHUGAR MILLS LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 886 / 2009 –SM[BR] dated 24.7.2009 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
SHRI BIPIN GARG ADV.
B-1289-A, VASANT KUNJ NEW DELHI-70.

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 & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066.**
**Principal Bench, New Delhi.**

**E/2338/07-SM**

**(Arising out of Order-in-Appeal No.72-CE/MRT-II/2007 dt.29.3.07 passed by Commissioner(Appeals), Meerut)**

M/s. The Dhampur Sugar Mills Ltd. Appellant

Versus

CCE, Meerut Respondent

Appearance
Sh. Atul Gupta, CS For Appellant

Sh. R.K.Saini, SDR for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 24.7.09
Order No. 886/2009 SM (BR)

Per Rakesh Kumar:

This is an appeal against order-in-appeal No.72-CE/MRT-II/2007 dt.29.3.07 by which the Commissioner(Appeals) upheld the Cenvat Credit demand alongwith interest and penalty confirmed by the Asstt. Commissioner vide order-in-original No.156/MBD/06 dt.27.12.06. The Appellant in Nov'04 on receipt of duty paid capital goods had taken Cenvat credit amounting to Rs.12,00,106/- i.e. 100% of the duty involved on the capital goods while at the time of receipt, as per the provisions of Cenvat Credit Rules, the capital goods Cenvat credit should have been confirmed to 50% of duty paid i.e. Rs.6,00,053/- and the balance amount should have been taken in the next financial year. However, when this irregularity was detected in April'05, they reversed the credit alongwith the interest. The Asstt. Commissioner vide order-in-original dt.27.12.06 confirmed the Cenvat credit demand of Rs.6,00,053/- alongwith interest and ordered the appropriation of the amount already paid by the Appellant. Besides he also imposed penalty of Rs.10,000/- on the Appellant under Rule 15 of the Cenvat Credit Rules,2004. The appeal against this order was dismissed by the impugned order-in-appeal No.72/CE/MRT-II/07 dt.29.3.07. It is against this order that the present appeal has been filed wherein the interest and imposition of penalty has been challenged on the ground that while excess credit had been taken in Nov'04, it had not been utilized and as soon as it was pointed out, the same was reversed.

2. Heard both sides.

2.1 Shri Atul Gupta, Co. Secretary, Ld. Counsel for the Appellant pleaded that there is no dispute about the fact while excess credit had been taken in Nov'04, but it had not been utilized and as soon as it was pointed out, the same was reversed alongwith interest; that in any case, the Appellant became eligible for the balance 50% of the capital goods Cenvat credit in April'05; that since the credit had not been utilized, interest is not chargeable and there is no justification for imposition of penalty and that in this regard, he relies upon –

(a) Hon'ble Punjab & Haryana High Court in the case of CCE vs Maruti Udyog Ltd. reported in 2007(214)ELT.173(P&H), the SLP against which has been dismissed by the Hon'ble Supreme Court vide judgment reported in 2007(214)ELT.A50(SC).

(b) Judgment of the Tribunal in the case of U.P.State Sugar Corpn. Ltd. vs CCE, Meerut reported in 2008(230)ELT.532(Tri.-Del.) wherein it was held that when wrongly taken Cenvat credit was not utilized and reversed after receipt of adjudication order, imposition of penalty and interest not warranted,

(c) Tribunal's judgment in the case of Kyungshin Industrial Motherson Ltd. vs CCE, Chennai reported in 2008(228)ELT.427 wherein it was held that when Cenvat credit though taken wrongly was not utilized and the same remained in the account, which was reversed before issuance of SCN, demand of interest and penalty is not sustainable and

(d) Judgment of the Hon'ble Supreme Court in the case of CCE, Mumbai vs Bombay Dyeing & Mfg. Co. Ltd. reported in 2007(215)ELT.3(SC) wherein it was held that when on receipt of duty paid inputs, the assessee took the credit which was never utilized and before utilization it was reversed it would amount to not taking the credit.

In view of the above Shri Gupta pleaded that there is no case for interest and penalty.

2.2 Shri R.K.Saini, Ld. DR defended the impugned order reiterating the Commissioner(Appeals) finding.

3. I have carefully considered the submissions from both the sides and perused the records. There is no dispute about the fact that till April'05 when the assessee reversed the credit wrongly taken credit, the same had not utilized by them and in fact by April'05, they had become eligible for the remaining 50% credit which in Nov'04 had been wrongly taken by them. Since the credit though wrongly taken in Nov'04 had not been utilized and it was reversed before its utilization, as soon as the regularity was pointed out, in view of the judgment of the Hon'ble Supreme Court in the case of CCE, Mumbai vs Bombay Dyeing & Mfg. Co. Ltd.(supra), it would amount to not taking credit at all and hence there would be no question of interest and any penalty. I find that in similar situation, the same view has been taken by Hon'ble Punjab & Haryana High Court in the

case of Maruti Udyog Ltd.(supra) which has been upheld by the Hon'ble Supreme Court and also by the Tribunal in the case of U.P.State Sugar Corpn. Ltd. vs CCE(Supra) and Kyungshin Industrial Motherson Ltd. vs CCE, Chennai(supra). In view of this I hold that the impugned order is not correct and the same is set aside. The appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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