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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/1455/2007 – SM[BR] WITH CO / 163 / 2007 Date 26/08/2009

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S PBM POLYTEX LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1074 / 2009 –SM[BR] dated 11.8.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S PBM POLYTEX LTD.

16 TO 19, SECTOR B, AKVN GROWTH CENTRE, KHERITAIGAON-BORGAON, DISTT. CHHINDWARA.

2. Adv. / Consult

NONE;-------------

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)
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12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
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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/1455/07-SM with CO/163/07-SM

(Arising out of Order-in-Appeal No.266-CE/BPL/2006 dt.9.3.07 passed by Commissioner(Appeals), Bhopal)

CCE, Bhopal — Appellant

Versus

M/s. PBM Polytex Ltd. — Respondent

Appearance
Shri S.N.Srivastava, DR For Appellant

None for Respondent

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

Final Date of decision: 11.8.09
Order No. 1074/2009 SM(BR)

Per Rakesh Kumar:

This is an appeal filed by the Deptt. against Commissioner(Appeals)'s order No.266-CE/BPL/2006 dt.9.3.07 by which the Commissioner(Appeals), while upholding the confirmation of the Cenvat credit demand against the respondent, reduced the penalty under Rule 15 of the Cenvat Credit Rules,2002 from Rs.1,08,160/- to Rs.8,000/-. The department has filed appeal against the reduction of penalty on the ground that the Commissioner(Appeals)'s order reducing the penalty of

Rs.8,000/- is contrary to the provisions of Rule 15 of the Cenvat Credit Rules,2002.

2. The respondent vide letter dt.2.4.09 have requested for decision of this appeal on merit after taking into consideration their submissions in cross objection filed by them which is registered as E/CO/163/07-SM.

3. Heard Ld. DR. Reading out Rule 15 of the Cenvat Credit Rules,2002 and reiterating the grounds of appeal in the Deptt.'s appeal, he pleaded that from the language of sub-rule (1) of Rule 15 of the Cenvat Credit Rules,2002, it is clear that penalty for taking Cenvat credit in contravention of the provisions of the Cenvat Credit Rules, is not exceeding the duty on the goods in respect of which contravention has been committed or Rs.1,000/- whichever is greater and that since in this case the wrongly taken Cenvat credit is Rs.1,08,000/-, penalty equal to this amount was warranted as per the provisions of Rule 15(1) of the Cenvat Credit Rules,2002. In this regard, he also cited the Tribunal's order in the case of CCE, Lucknow vs Sarjoo Sahakari Chini Mills Ltd. - 2006(204)ELT.478(Tri.-Del.)

4. I have carefully considered the submissions of the Ld. DR and also submissions made by the respondent in the Cross Objection. As per provisions of sub-rule (1) of Rule 15 of Cenvat Credit Rules'2002, the penalty prescribed for taking the Cenvat credit on inputs or capital goods wrongly, is "an amount not exceeding the duty on the excisable goods in respect of which the

contravention has been committed or Rs.10,000/- whichever is greater". From the language of this Rule, it is clear that what has been prescribed is the upper limit. If the duty involved on the goods in respect of which contravention has been committed is less than Rs.10,000/-, the penalty not be exceeding Rs.10,000/-, can be imposed and if the duty involved on the goods in respect of which contravention has been committed is more than Rs.10,000/-, penalty not exceeding the amount of duty involved can be imposed. Penalty within these upper limits can be imposed. From the language of this sub-rules, it cannot be inferred that only the penalty equal to these upper limits has to be imposed. The Deptt.'s contention would have been correct if instead of the words "not exceeding", the words "equal to" had been used. Same view has been taken by a Larger Bench of the Tribunal with regard to similarly worded Rule 25(1) of the Central Excise Rules,2002, in the case of CCE, Bhopal vs Rama Wood Craft(P) Ltd. reported in 2008(225)ELT.348(Tri.-LB). In view of this, I do not find any merit in the Revenue's appeal. The same is dismissed. The Cross Objection is also disposed of as above.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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