TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/730 /2007 – SM[BR] Date 26/08/2009

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

To :
C.C.E. ALLAHABAD
38, M.G. MARG, CIVIL LINES, ALLAHABAD.

C.C.E. ALLAHABAD Appellant

Vs

M/S SOMAIYA ORGANICS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1082 / 2009 –SM[BR] dated 20.8.2009 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 SOMAIYA ORGANICS (P) LTD.
   CAPTAINGANJ DISTELLERY, KUSHINAGAR(U.P.)
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)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.730/2007 -SM(Br)

(Arising out of order in appeal No.107/CE/Alld/06 dated 11.10.06 passed by the Commissioner of Central Excise (Appeals), Allahabad)

CCE, Allahabad Appellant

Vs

M/s Somaiya Organaics (P) Ltd Respondent

Appeared for Appellant : Shri S. Gautam, DR
Appeared for Respondent : None

Date of Hearing: 5.8.09

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**

Final Order No. 1082/2009 SM(Br) ~~/2009~~

Per D.N. Panda:

None is present for the respondent.

2. Learned DR submits that the respondent has been enriched at the cost of the Revenue taking Cenvat credit of Rs.21,635/- on 29.9.1997 and similar such credit of Rs.6,025/- on 27.2.1998. When this credit was not admissible, the appellants had reversed the entry on 20.7.2008. In respect of the first credit, benefit has been availed by the appellants for five years unlawfully. Similarly for the second credit, the benefit was availed for more than four

years without any sanction of law. Therefore, mere reversal shall not exonerate the appellant from penal provisions of law. The show cause notice dated 13.7.2005 clearly brought the gravity of the offence stating that the demand is sustainable for the contravention of law followed by penalty. This is sufficient enough when provision of law under Section 11AC was invoked by the show cause notice. Therefore, learned Commissioner's order granting immunity from penalty and interest is not sustainable.

3. Heard the Revenue. Pleadings of Revenue appear to be genuine. When the respondent has availed benefit from the state not permissible under law, that has to be restored back to the State with interest and also penalty to prevent recurrence. Show cause notice dated 13.7.2005 appearing at page 6 of the appeal folder clearly brings out the offence. Therefore appellant had a clear notice of the offence committed to lead defence. Observation by the learned Commissioner that the show cause notice did not make any allegation of fraud, collusion, willful misstatement, suppression of fact or contravention of the law or rule has no basis when the contravention is apparent from the show cause notice itself

4. In view of the aforesaid finding, in all fairness, learned Commissioner (Appeals) is required to hear the matter afresh when Revenue relies on the decision of the Hon'ble High Court of Bombay in the case of CCE Aurangabad Vs Padmashri V.V. Patil SSK Ltd reported in 2007 (215) ELT 23 and also Revenue's interest was prejudiced. Granting a fair opportunity of hearing, reasoned

and speaking order is required to be passed by the learned Commissioner. In the result, the appeal is allowed by way of remand, setting aside the impugned order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*