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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/2282/2007 – SM[BR] Date 29/09/2009

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 KISAN SAHKARI CHINI MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1170 / 2009 –SM[BR] dated 9.9.2009 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 KISAN SAHKARI CHINI MILLS
SATHION, DISTT. AZAMGARH
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
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2282 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 96-CE/ALLD/2007 dated 16/05/2007 passed by The Commissioner (Appeals), Central Excise, Allahabad (U.P.).]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would 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 Department Authorities?	:

CCE, Allahabad — Appellant

Versus

M/s Kisan Sahkari Chini Mills — Respondent

Appearance

Shri S. N. Srivastava, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 09/09/2009.

Final Order No. 1170/2009-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

In this case, according to the Department, the respondent had taken excess Cenvat credit of Rs. 3,074/-, which on being pointed out was paid back alongwith interest. The Department, however, subsequently issued a show cause notice for confirmation of this demand and imposition of penalty. The Assistant Commissioner vide order-in-original dated 25/1/06 imposed penalty of equal amount i.e. Rs. 3,074/- under Section 11AC readwith Rule 13 of Cenvat Credit Rules. The Department not satisfied with the quantum of penalty, filed a review appeal before the Commissioner (Appeal) on the ground the minimum penalty prescribed under Rule 13 of the Cenvat Credit Rules is Rs. 10,000/-. The Commissioner (Appeals), however, vide order-in-appeal No. 96-CE/ALLD/2007 dated 16/05/2007 dismissed the Department's appeal. It is against this order that the present appeal has been filed by the Department.

2. None appeared for the respondent. Heard Shri S.N. Srivastava, the learned Departmental Representative who reiterated the grounds of appeal.

3. I have carefully considered the submissions of the learned Departmental Representative and have perused the records. When the penalty has been imposed under Section 11AC, which prescribed penalty equal to the duty evaded, the penalty imposed under this Section could not be more than the Cenvat credit whose demand has been confirmed and when Section 11AC has been invoked, Rule 13 would not be applicable. In any case from reading of Rule 13 of the Cenvat Credit Rules, 2004, it is clear that what this Rule prescribes is an upper limit and not the minimum penalty. In view of this, I do not find any merit in the Revenue's appeal. Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK