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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/2760/2007 – SM[BR] Date 14/10/2009

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

To :
M/S KESARWANI ZARDA BHANDAR
SAHSON, ALLAHABAD.

M/S KESARWANI ZARDA BHANDAR Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1243 / 2009 –SM[BR] dated 29.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
   MR.S.P. OJHA
   299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2760 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.147/CE/Alld/2007 dated 25.07.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad.]

Date of Hearing/ Decision:29.09.2009

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.		
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No.
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. Kesarwani Zarda Bhandar ...Appellants
(Rep. by Shri S.P. Ojha, Consultant)

Vs.

CCE, Allahabad ...Respondent
(Rep. by Shri S.K. Bhaskar, SDR)

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

Final Order No. 1243/2009 SM (BR)/Dated:29.09.2009

Per P.K. Das:

The appellants filed this appeal against imposition of penalty of Rs.40,000/-.

2. After hearing both the sides and on perusal of the records, I find that the main contention of the ld. Consultant is that the appellants had taken credit in respect of Goods Transport Agencies Services, which they

have not utilised and, therefore, no penalty can be imposed. In this connection, he drew the attention of the Bench to the copy of the Chartered Accountant's certificate. He also submits that the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Mumbai-I Vs. Bombay Dyeing & Mfg. Co. Ltd. reported in 2007 (215) ELT 3 (SC) held that the credit taken but before utilisation credit was reversed - amounts to not taking credit. He also relied upon the decision of the Tribunal in the case of M/s. Dey's Medical (P) Ltd. vide Final Order No.540/09-SM (BR) dated 14.05.2009, wherein it has been held that the credit taken wrongly and debited voluntarily, no penalty would be imposable. On query from the Bench, Ld. Consultant fairly submits that the Chartered Accountant's certificate was not placed before the Commissioner (Appeals).

3. I find that to meet the ends of justice, it is appropriate that the appellants should be given an opportunity to place the Chartered Accountant's certificate before the Commissioner. Accordingly, the impugned order of the Commissioner (Appeals) is set aside. The matter is remanded back to the Original Authority to decide afresh after considering the Chartered Accountant's certificate and the case laws. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 29.09.2009.

(P.K. Das)
Member (Judicial)

Ckp.