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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/3223/2007 – SM[BR] Date 19/11/2009

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

To :
M/S MODERN STEELS LTD.
G.T. ROAD, (SIRHIND SIDE), MANDI GOBINDGARH

M/S MODERN STEELS LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1452 / 2009 –SM[BR] dated 13.11.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.

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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:13.11.2009

Central Excise Appeal No.3223 of 2007

Arising out of order in appeal No.499/CE/CHD/2007 dated 17.10.07 passed by the Commissioner (Appeals), Central Excise, Chandigarh

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Modern Steels Ltd. ... Appellant

Vs.

C.C.E., Chandigarh .... Respondent

Appearance:

Shri Vikrant Kakria, Advocate for the appellant
Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1452/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 499/CE/CHD/2007 dated 17.10.07.

2. Heard both sides.

3. The appellants received imported inputs and availed Cenvat credit. They were entitled to take Cenvat credit of CVD paid on the imported goods. CVD had two components - basic excise duty and education cess. In addition to taking basic excise duty and education cess components relating to CVD. the appellant has taken credit of education cess payable on the basic

customs duty. This was pointed out by the Audit on 27.12.2004. The appellants reversed the credit of education cess on basic customs duty amounting to Rs.4,31,394/- on 27.4.2005 and also paid the interest on 21.7.2005. The Department issued show cause notice on 2.2.2006, proposing penal action under Rule 15 of Cenvat Credit Rules " for wrongly taking and utilising the said credit". The original authority imposed a penalty of Rs.4,31,394/- after observing that the appellant knowingly withheld the Government dues which showed that the intention of the party was not bona fide. Commissioner (Appeals) , on appeal by the party reduced the penalty to Rs.1.50 lakhs. For sustaining part of the penalty the Commissioner (Appeals) took into account that the Cenvat credit was reversed only on being pointed out by the Range Officer.

4. Learned Advocate for the appellants submits that it was a mistake in taking the credit of education cess relating to basic customs duty. The dispute relates to the period 9.7.04 to 31.3.05, the initial stage of introduction of Education Cess. They ~~are~~ were under the impression that entire education cess was available as credit and they did not know that the education cess on the basic customs duty was not available as credit. On being pointed out by the audit party and as conveyed to them by the Range Officer, they promptly paid the wrongly availed credit along with interest. The show cause notice does not allege any intention on their part to evade duty. The mistake is a bona fide one and does not warrant penalty under Rule 15(1) of Cenvat Credit Rules. He relies on the decision of the Tribunal in the case of Bagpat Cooperative Sugar Mills Ltd. vs. C.C.E., Meerut II reported in 2007 (212) ELT 77 (Tri-Del.) wherein it has been held that in cases where the contravention did not involve any deliberate attempt to evade duty, under Rule 13(1) of Cenvat Credit Rules, 2002(as it was existing), the penalty imposable was only Rs.10,000/-. He submits that under Rule 15(1) of Cenvat Credit Rules, for similar circumstances, the minimum penalty prescribed is only Rs.2000/-.

5. Learned SDR reiterates the finding of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is definitely a mistake in taking credit of education cess on basic customs duty which is not in dispute. Admittedly, the entire amount of credit along with interest stands paid. The show cause notice does not make any allegation of deliberate intention on the part of the appellant to avail the ineligible credit. The explanation offered by the learned Advocate that at the initial stage of imposition of education cess, the appellant had under mistaken impression taken credit wrongly deserves to be accepted. Therefore, there is justification for further reduction of penalty sustained by the Commissioner (Appeals).

7. Taking the entire facts of the case into account, I reduce the penalty to Rs.10,000/- (rupees ten thousand) only.

8. Appeals is partly allowed as above.

(M. Veeraiyan)
Member (Technical)

scd/