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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/2810 AND 2813 / 2007 -SM[BR] E/ CO / 19 & 26 / 2008 -SM[BR] Date 08/12/2009

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 DEY'S MEDICALS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1490 – 1491 / 2009 -SM[BR] dated 1.12.2009 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 DEY'S MEDICALS (P) LTD.
   NAINI, ALLAHABAD.
   [2] M/S DEY'S MEDICAL [P] LTD.
   NAINI, ALLAHABAD.

2. Adv. / Consult SHRI S.P. OJHA CONSULTANT
   299, BAGHAMBARI HOUSING SCHEME, ALLAHAPUR ALLAHBAD

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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(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 1.12.2009

Central Excise Appeal No.2810 of 2007 and Cross-Objection No.19 of 2008
Central Excise Appeal No.2813 of 2007 and Cross-Objection No.26 of 2008

Arising out of the order in appeal No.156/CE/ALLD/2007 dated 27.7.2007 and No.160/CE/ALLD/2007 dated 20.8.07 passed by the Commissioner (Appeals), Customs & Central Excise, Allahabad.

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

C.C.E., Allahabad ... Appellant

Vs.

M/s Dey's Medical (P) Ltd. .... Respondent

Appearance:

Shri R.K. Saini, Authorized Departmental Representative (DR) for the Revenue and Shri S.P. Ojha, Consultant for the respondents

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical) SM (B2)

Oral Order No. 1490-1491/2009

Per M. Veeraiyan:

1.1 Appeal No.E/2810/07 is against the order of the Commissioner (Appeals) No. 156/CE/ALLD/2007 dated 27.7.2007. Cross-Objection No.19/08 is connected to this appeal.

1.2 Appeal No.E/2813/07 is against the order of the Commissioner (Appeals) No. 160/CE/ALLD/2007 dated 20.8.07. Cross-Objection No.E/28/08 is connected to this appeal.

1.3 The orders of the Commissioner (Appeals) dated 27.7.07 and 20.8.07 arise out of the same order in original No113-Dem/2007 dated 26.2.2007.

2. Heard both sides.

3.1 The relevant facts, in brief, are that the respondents are a manufacturer of P & P medicines and perfumed hair oil. They cleared coconut hair oil on payment of duty to the depots. Some quantity of such coconut oil cleared on payment of duty were returned back during the period from 23.3.04 to 6.4.04 from the depots with the remarks that they were "unfit for sale". The respondents took credit of the duty originally paid amounting to Rs.16,90,941.89. They apparently reprocessed only part of the goods and the same were found to be marketable. Accordingly, they paid Rs.3,04,122.87 at the time of clearance of the reprocessed goods. The balance of the goods were not reprocessed and were not marketable. Accordingly, the respondents reversed the credit amounting to Rs.13,86,819.02 on 9.4.05 involved on the goods which were not processed. The original authority held that the goods were not capable of being reprocessed and therefore, held that the entire credit has been wrongly taken and accordingly, demanded interest from the date of taking of the credit till the date of reversal of the credit amounting to Rs.1,18,582/-. He also imposed a penalty of Rs.10,000/-

3.2 Against the order of the original authority, the party filed appeal challenging the demand of interest. The Department also filed an appeal seeking to enhance the penalty to Rs.1,18,582/-. Commissioner (Appeals) rejected the appeal of the Department and allowed the appeal of the party. In effect, the demand of interest as well imposition of penalty of Rs.10,000/- stand set aside.

4. Learned DR submits that the party has not acted bona fidely in bringing back the goods to the factory for reprocessing after declaring that the goods were not fit for sale. At any rate, substantial quantity of the goods returned have not been reprocessed at all. Therefore, the credit taken under Rule 16 was not justified. He also reiterated the grounds of the appeal in

relation to the imposition of penalty equal to the interest leviable on the credit illegally taken..

5. Learned Consultant for the respondents submits that the goods were not marketable in the condition in which they were returned to the factory. Earnest efforts were taken to reprocess the goods and the part of the goods were reprocessed and cleared thereafter on payment of duty. Therefore, the taking of credit and utilising of credit was justified. Once they decided that the rest of the goods brought back could not be reprocessed, they have paid the credit involved on such goods on 9.4.05. Therefore, there is no irregularity. The question of demand of interest does not arise. At any rate, it is a question of interpretation of ~~different~~ provisions of Rule 16 of the Central Excise Rules and no penalty is warranted.

6. I have carefully considered the submissions from both sides. Admittedly, part of the goods cleared on payment of duty were subsequently found unfit for sale and accordingly, the said goods were returned back. The part of the goods so returned were reprocessed and cleared on payment of duty. It is clear that a decision was taken not to reprocess the balance amount of goods received by them which were pending processing in the respondent's factory. The Rule 16 envisages that the goods which were cleared on payment of duty can be brought back for the purpose of reprocessing, reconditioning etc. In such a situation the credit of duty paid originally could be taken treating the returned materials are "inputs". It also envisages that the goods so returned should be subject to reprocessing. Admittedly, only that part of the goods were subject to reprocessing and cleared on payment of duty. In respect of such goods which were reprocessed and cleared on payment of duty, there is no irregularity as they are covered under Rule 16 of the Central Excise Rules. In respect of other goods which were brought to factory but subsequently not processed, in my opinion, provisions of Rule 16 cannot be attracted. Therefore, the credit taken was not valid. The respondents have already reversed the credit on 9.4.05.The short issue involved is whether the interest is payable from the

date of taking credit till reversal of the credit on 9.4.05. As part of the goods have not been subjected to any process, in respect of such goods, the credit taken being not regular and the credit admittedly has been utilised, interest is payable on such credit. However, it is found that the original authority has confirmed the demand of interest in respect of the entire credit including the credit taken on those goods which were processed and cleared on payment of duty subsequently. To that extent, the order of the original authority requires to be modified.

7. As regards the imposition of penalty, I hold that it is a case of interpretation of the provision of Rule 16 and does not warrant any penalty.

8. In view of the above, the appeals are disposed of as follows:

a) Prayer for restoration/enhancement of penalty is totally rejected.

b) Interest shall be limited to the credit taken on goods which are not subject to any process. The original authority shall re-quantify the interest payable on this count.

9. Cross-Objections which are basically in support of the orders of the Commissioner (Appeals) are also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/