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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/2594/2007 – SM[BR], E/C.O/25/08& E/C.O/ 132 / 2009 –SM[BR] Date 14/12/2009

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**. 1520 / 2009 –SM[BR] dated 23.11.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S DEY'S MEDICALS (P) LTD.
   NAINI , ALLAHABAD (U.P)
2. Adv. / Consult SHRI S.P.OJHA CON.
   299, BAGHAMBARI HOUSINGH SCHEME,
   ALLAHPUR ALLAHABAD
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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/2594/07,
Excise C.O. No. E/CO/25/08 &
Excise CO No. E/CO/132/09

Date of Hearing/Decision:23.11.2009

CCE, Allahabad ...Appellant

Vs

M/s. Day's Medicals (P) Ltd. ... Respondent

Present for the Appellant :Shri. Anil Khanna, SDR
Present for the Respondent: On merits

Coram: Hon'ble Mr. Rakesh Kumar, Technical Member

final **ORDER NO.** 1520/2009 SM(BR) **DATED:23.11.2009**

PER: RAKESH KUMAR

In this case the Dy. Commissioner, Central Excise, Allahabad vide Order in Original No.103-Dem/2006 dated 7.12.06 confirmed cenvat credit demand of Rs.14,030/- alongwith interest against the respondent and imposed penalty of equal amount under rule 13(2) of Cenvat Credit Rules 2002 read with section 11AC of Central Excise Act 1944 on the ground that the Cenvat Credit of Rs.14,030/- had been taken by the respondent on the basis of photocopies of the invoices. On appeal to Commissioner (Appeals) the Commissioner Appeals vide Order-in-Appeal dated 19.12.2006 upheld the cenvat credit demand but reduced the penalty to Rs.10,000/-. The Revenue is in appeal before the Tribunal for raising the penalty to the amount equal to the wrongly taken Cenvat Credit.

2. None appeared for the respondent. However the respondent have furnished cross-objection wherein they have mentioned that the respondent also had filed an appeal against the Commissioner (Appeals) order challenging the penalty and the Tribunal vide Final Order No.540/09 SM dated 14.5.09 has set aside the penalty as well as interest on the ground that though the respondent had taken cenvat credit on the basis of photocopies of the invoices, they had not utilized it and as soon as the wrong credit was pointed out by the Department the same was reversed. The respondent, therefore, pleaded that in view of the Tribunal's Final Order No.540/09 dated 14.5.09 setting aside the penalty and interest, the impugned order of CCE (Appeals) stands merged with the Tribunal's Order.

3. Shri Anil Kumar ld. DR reiterated the grounds of appeal, but he also accepted that the party's appeal has already been decided by the Tribunal vide Final Order No. 540/09 dated 14.5.09 by which a penalty on the appellant has been totally set aside.

4. I have carefully considered the submissions of the ld. DR and of the respondent as mentioned in the cross-objection. Since the undisputed position is that the penalty on the respondent has already been set aside by the Tribunal vide Final Order No.540/09 dated 14.5.09, the impugned order

stands merged with the Final Order. In view of this position, the Revenue's appeal for enhancement of penalty does not survive. Accordingly, the Revenue's appeal is dismissed.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita