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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/2170/2009 – SM[BR] Date **02/02/2011**

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

To :
M/S PARSONS NUTRITIONAL PVT LTD
PLOT NO 5, SITE-IV, INDL AREA, SAHIBABAD,
**GAZIABAD. [U.P.]**
**M/S PARSONS NUTRITIONAL PVT LTD** Appellant
Vs
**C.C.E. GHAZIABAD** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 97 / 2011 - SM[BR]** 25.1.2011 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. GHAZIABAD**
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302
2. Adv. / Consult
**MR.N.K. SHARMA & ASSOCIATES,**
131-NH-V, RAILWAY ROAD, NIT,
FARIDABAD-121001.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.E/2170/2009

Date of Hearing: 25.01.2011
Date of Decision: 25.01.2011

(Arising out of Order-in-Appeal No.165-CE/GZB/2009 dt.29.06.2009 passed by the CCE (A), Meerut-I, Ghaziabad)

For approval and signature:
**Hon'ble Mr.M.Veeraiyan 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? | Yes |
| 2 | Whether it should be released under Rule 27 of the 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.Parsons Nutritional Pvt.Ltd. Appellant

Vs.

CCE, Ghaziabad Respondent

Present for the Appellant: Shri N.K.sharma, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

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

Final **ORDER NO.** 97/2011 SM (BR)

**PER: M.VEERAIYAN**

This is an appeal against the order of the Commissioner (Appeals) No.165-CE/GZB/2009 dt.29.06.2009 in so far as the same relates to upholding the penalty of Rs.55,302/-.

2. Heard both sides.

3. The appellants have taken the cenvat credit on the basis of photocopies of bills of entry which were issued in the name of

M/s.Glaxo Smithkline Consumer Health Care Ltd. during the period from March, 2006 and April, 2006. During audit, the mistake was noticed and the appellants debited the entire amount of credit taken by them alongwith interest. The original authority confirmed the demand and imposed equal amount as penalty. The Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate submits that the appellants were undertaking the job work for M/s.Glaxo Smithkline Consumer Health Care Ltd. In stray cases, the credit has been taken on the basis of photocopies as the original copies were lost/misplaced. This was a bonafide mistake. On pointing out, the credit alongwith interest stands paid. They are not disputing the liability to pay duty and interest. Under these circumstances, imposition of penaty was not justified. He also submits that the ingredients for invoking the extended period of limitation and imposition penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 have not been mentioned in the show cause notice.

5. Learned SDR submits that taking of credit on the basis of photocopies of bills of entry was highly irregular and the penalty has been rightly imposed.

6. I have carefully considered the submissions from both sides and perused the records, The explanation offered on behalf of the appellants that in stray cases where the original copy was misplaced, they have taken the credit based on the photocopies of the bills of entry appears reasonable and acceptable. The receipt of the materials and use of the same for

intended purpose is not in dispute. Under these circumstances, basically the issue relates to validity of the documents based on which the credit has been taken. No malafide intention as such is alleged against the appellants. While the credit has been held inadmissible which is not being disputed, I do not find any justification for sustaining the penalty. This is a fit case where ~~are~~ on payment of duty involved alongwith interest, no show cause notice should have been issued. The appeal is disposed of as follows:-

(a) The duty demand and interest are upheld as uncontested.

(b) The penalty is set aside.

(Pronounced in the open court)

**(M.VEERAIYAN)**
**MEMBER (TECHNICAL)**

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