TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2154/2009 – SM[BR] Date **02/02/2011**

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

To :
M/S ALLENGERS MEDICAL SYSTEM LTD
VILLAGE- BHANKARPUR, DERABASSI.

M/S ALLENGERS MEDICAL SYSTEM LTD Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 98 / 2011 - SM[BR]** dated 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017
2. Adv. / Consult
MR.JAGMOHAN BANSAL
1640/1,SECTOR-40B,CHANDIGAR
H
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2154 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 03/CE/Appl/2009 dated 30.4.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

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? : NO
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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

---

M/s. Allengers Medical Systems Ltd. — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Appearance:
Shri Naveen Bindal, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 25.01.2011

Final

ORAL ORDER NO. 98/2011 SM (BR)

<u>Per M. Veeraiyan</u>:

Heard both sides.

2. The appellant has been denied credit of Rs.2,60,081/- relating to the period July, 96 to January, 98 on the finding that the they have not proved that the goods have been received and utilised in the manufacture of excisable goods.

3. Learned Advocate appearing for the appellants submits that they are not contesting the demand of duty. However, he submits that neither the original authority nor Commissioner (Appeals) has given option to pay reduced penalty in terms of proviso to section 11AC. He seeks grant of said option by the Tribunal. He relies on the decision of the Hon'ble High Court of Ahmedabad in the case of Commissioner of Central Excise, Surat I vs. Harish Silk Mills reported as 2010 (255) ELT 393 and decision of the Hon'ble High Court of Punjab and Haryana High Court in the case of Commissioner of Central Excise, Rohtak vs. J.R. Fabrics (P) Ltd. reported in 2009 (238) ELT 209 (P&H).

4. Learned SDR submits that the appellants have not paid the duty before issue of show cause notice. They have also not paid the interest.

5. In the rejoinder, learned advocate submits that they have already paid the entire penalty on 2.6.2009 and excess amount should be adjusted towards interest liability.

6.1 I have carefully considered the submissions from both the sides and perused the records. The duty demand is not being disputed before me. The only issue to be decided is whether the concessional penalty as provided in terms of proviso to section 11AC could be extended or not. The issue has been settled by the decision of the Hon'ble High Court in the case of Harish Silk Mills cited supra and the relevant portions of the judgement are as follows:

> "11. Before parting, we observe that the order passed by the Tribunal cannot be said to be a non-speaking and non-reasoned order. The authorities cited by Mr. Oza in support of his submission that a non-speaking order is passed by the Tribunal and hence it deserves to be dismissed, were duly considered by us and we are of the view that they are not applicable to the facts of the present case. The Tribunal while dismissing the Departmental Appeal observed that the quantum of the penalty is to the extent at around 25% of the duty amount and does not call for any interference. The Tribunal is taking consistent view in the matters of penalty levied under Section 11AC and when the duty amount is paid before issuance of show cause notice, the penalty is reduced to 25% of the duty amount. If the duty amount with interest is not paid in time and even reduced penalty of 25% of the duty amount is not paid in time and option is not given to the respondent assessee, we have taken the view that such option should be given to the assessee and period of 30 days would commence from the date of giving such option. In this view of the matter, no interference is called for in the order of the Tribunal."

6.2 In the said case, in the absence of option being given by the lower authorities, the option had been granted to pay the duty amount, interest and the reduced penalty within 30 days from the date of option.

7. In view of the above, the appeal is disposed of as follows:

a) duty demand is confirmed as not being contested.

b) The penalty payable shall be Rs.65,020.25 provided the appellants pays the balance of interest, if any, within 30 days from today.

c) If the balance amount of interest, if any, is not paid within 30 days from today, the penalty shall be Rs.2,60,081/-.

(M. Veeraiyan)
Member(Technical)

ss