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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/736 /2009 – SM[BR]** Date **23/08/2011**

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

To :
MEHTA PHARMACEUTICALS PVT LTD
G.T.ROAD, CHHEHARTA, AMRITSAR,PB

MEHTA PHARMACEUTICALS PVT LTD Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 497/2011-SM[BR]** dated 11.8.2011 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.S. K. PAHWA
MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.

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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delli,

Court No.II

Date of hearing & decision : 11. 08. 2011

Ex. Appeal No.E/736/09-SM

(Arising out of O/A No. 09/CE/Appl/Jal/2009 dated 15.1.09 passed by Commr. of Central Excise (Appeals), Jalandhar, Chandigarh)

For approval and signature:

Hon'ble Mr. D. N. Panda, Member (Judicial)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Mehta Pharmaceuticals Pvt. Ltd.

...APPELLANT(S)

VERSUS

CCE, Chandigarh

RESPONDENT (S)

APPEARANCE

Rep. by Shri S. K. Pahwa, Advocate for the Appellant (s)
Rep. by Shri Anil Khanna, DR for the Department

CORAM:

Hon'ble Mr. D. N. Panda, Member (Judicial)

Final Oral Order No. 497/2011-SM(Br)

Per Mr. D. N. Panda :

Ld.Counsel for the appellant mentions that he is unable to argue this matter for which the same may be adjourned. But when the issue involved in this matter is looked into, both sides agree that the duty element has been paid and also interest thereon paid. The dispute is as to whether the appellant is entitled to the benefit of reduced penalty under first and second provisio to Section 11AC of the Central Excise Act, 1944.

2. Shri Pahwa, ld. Counsel for the appellants does not agitate on the duty element. He says that the appellant is keen to be free from litigation paying 25% of the duty amount towards penalty bringing end to the litigation. He further submits that when such reduced penalty is agreed to be paid, an order may be passed to grant the benefit intended by Section 11AC of the Central Excise Act, 1944.

3. To the aforesaid proposition of Shri Pahwa, ld. DR does not agree.

4. Heard both sides and perused the records.

5. The adjudication order no where says that the Appellant had intention to cause loss of Revenue without maintaining separate accounts in respect of inputs used for manufacture of excisable goods and exempted goods. Plea of the appellant was that maintenance of separate accounts was not known to the assessee for which it agreed to suffer 10% of levy as envisaged by Rule 6 of Cenvat Credit Rule 2004. In absence of malafides of the appellant and also without any

cogent evidence justifying its conterminous conduct, the appellants cannot be deprived of the benefit of reduction in penalty envisaged by first and second provisio to Section 11AC of the Central Excise, 1944. Such a view is also fortified from the ratio laid down by the Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Central Excise, Ludhiana Vs. Sangrur Agro Ltd. reported in 2010 (254) ELT 25 (P & H).

6. In the result, the appeal is allowed to the limited extent as indicated above, confirming duty and interest fully and penalty partially.

(Dictated and pronounced in the open Court)

(D. N. Panda)
Member (Judicial)

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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision:21.05.2009

Excise Stay Application No. 725 of 2009 in Excise Appeal No. 736 of 2009

M/s Mehta Pharmaceuticals Pvt. Limited — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance:

Appeared for the Appellant - Shri S.K. Pahwa, Advocate
Appeared for the Respondent - Shri A.K. Rastogi, DR

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No.____________________

Per Justice R.M.S. Khandeparkar:

The matter pertains to single Member Bench. Registry to do the needful.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/