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/1086/2011 – SM[BR] E / STAY /1347 /2011-SM[BR] **Date 23/12/2011**

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

To :
M/S HEALTH CAPS INDIA LTD
VILL- FATEHPUR, TEHSIL-BALACHAUR, DISTT- NAWANSHAHR(PB)
M/S HEALTH CAPS INDIA LTD Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 925/2011-SM[BR]&S/867/2011** dated 13.12.2011 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.KAMALJEET SINGH
J-144, PATEL NAGAR -I,GHAZIABAD.

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 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT NO. II

E/Stay/1347 of 2011-SM in &
Central Excise appeal No. 1086/2011-SM

[Arising out of Order-in-Appeal No. 01/CE/CHD-I/2009 dated 19.1.2011 passed by the Commissioner (Appeals), Central Excise, Chandigarh-I].

Date of Hearing/decision: 13th December, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Health Caps India Ltd., Appellant

Vs.

CCE, Chandigarh-II Respondent

Present for the Appellant : Shri Kamaljeet Singh, Adv.
Present for the Respondent : Shri P.K. Sharma, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 925/2011 SM (Br) &
S-867/2011 SM(Br)

Per D.N. Panda:

It is grievance of the appellant that duty paid goods was sold by it. Since the goods were not accepted by the buyers It was returned back. While returning the goods the buyer issued invoices wherein duty payment column showed as "nil". Audit pointed out that such a document did not entitle the appellant to Cenvat credit of Rs. 1,68,510/-. None of the authorities below found any evidence as to no supply of goods in question by the appellant to the buyer. Because the buyer operates in duty exempted area the goods returned by that buyer should not dis-entitle the appellant to claim of Cenvat credit.

2. Learned D.R. support the order of the authority below.

3. Heard both sides and perused the record.

4. The dispute being on the aforesaid limited point, both the stay application and appeal are taken up for disposal by this common order. Orders of the authorities below show that they have made exercise on the basis of audit advice. It is settled principle of law that the authorities should independently examine the allegation, if any, and if required, conduct ~~the~~ inquiry and then it should come to a rational conclusion discharging the statutory duties. Such an essential exercise is absent in the orders passed by both the authorities below. The impugned order merely pointed out certain defects. Neither there was any inquiry conducted against the buyer nor any investigation made into the record of the appellant ~~and~~ with the version of supply of goods. In absence of proper inquiry into the material fact an arbitrary order passed becomes unsustainable.

5. When the conclusion is as above, the appeal is required to be allowed dispensing requirement of pre-deposit. That is ordered accordingly.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK