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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/2749/2007 – SM[BR] WITH CO / 284 / 2007 –SM[BR] Date 30/03/2010

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

To :
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI II Appellant

Vs

M/S ESTOCORP(INDIA)PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 384 / 2010-SM[BR] dated 23.3.2010 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 ESTOCORP(INDIA)PVT LTD
   B-56, OKHLA INDUSTRIAL AREA, PH-I, N DELHI.
2. Adv. / Consult
   NONE;--------------

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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 23.3.2010

Central Excise Appeal No.2749 of 2007 – SM with Cross-Objection No.284 of 2007-SM

Arising out of the order in appeal No.103-CE/DLH/2007 dated 31.7.2007 passed by the Commissioner(Appeals), Central Excise , Delhi-II.

For Approval and Signature:

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

1	Whether Press Reporter 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 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

C.C.E., Delhi II ... Appellant

Vs.

M/s Estocorp (India) Pvt. Ltd. ... Respondent

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and none for the respondent

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

Oral Order No. 384/2010 SM (Br)

Per M. Veeraiyan:

E/2749/07 is an appeal by the Department against the order of Commissioner (Appeals) No.103-CE/DLH/2007 dated 31.7.2007. Cross-Objection No.284/2007 is connected to the above appeal. 2. None appears for the respondents. There is a communication dated 1.9.2009 addressed to the

Assistant Registrar seeking decision of the appeal on merit. Heard the learned SDR.

3. The original authority held that education cess payable on the final products manufactured by the respondents should have been paid either out of credit accruing out of education cess paid on inputs or through cash and not out of credit accruing out of ~~only~~ basic excise duty paid on the inputs and accordingly, demanded duty of Rs.78,798/- along with interest and imposed equal amount as penalty. Commissioner (Appeals), on appeal by the party set aside the order of the original authority following the decision of the Tribunal in the case of Sun Pharmaceutical Industries vs. C.C.E., Jammu reported in 2007 (207) ELT 673. The learned SDR referring to the grounds of appeal submits that the Department filed appeal to the Hon'ble High Court against the decision in the case of M/s Sun Pharmaceutical Industries. He fairly concedes that the Hon'ble High Court of Jammu & Kashmir vide order dated 7.11.2008 in CERRR No.7/2007, 5/2007 and 2/2007 did not interfere with the order of the Tribunal. The learned SDR also submitted that the Department has filed an SLP against the decision of the Hon'ble Jammu & Kashmir. However, he fairly concedes that no stay has been granted by the Hon'ble Supreme Court.

4. In the Cenvat Credit Rules, there is no provision relating to restricting the use of credit accruing out of BED paid on inputs towards paying education cess on final products. The grounds of appeal that the Department filed appeal before the High Court against the decision of Sun Pharmaceutical Industries cited supra also does not survive.

5. In view of the above, the appeal by the Department is rejected. Cross-Objection which is merely in support of the order of the Commissioner (Appeals) is also disposed of.

(M. Veeraiyan)
Member (Technical)