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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/2717/2007 – SM[BR] Date 18/01/2010

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

To :
C.C.E. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

C.C.E. GHAZIABAD Appellant

Vs

M/S SSG PHARMA (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 85 / 2010 –SM[BR] dated 12.1.2010 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 SSG PHARMA (P) LTD.

M-1/3, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD

2. Adv. / Consult SHRI PRAVEEN CHAUHAN, ACCOUNTANT
M/S RESPONDENTS;-------------------------

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:12.1.2010

Central Excise Appeal No.2717 of 2007-SM

Arising out of the order in appeal No.69-CE/GZB/2007 dated 13.7.2007 passed by the Commissioner (Appeals), Central Excise, Ghaziabad.

Hon'ble Shri 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?	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

C.C.E. Ghaziabad ... Appellant

Vs.

M/s SSG Pharma (P) Ltd. ... Respondents

Appearance:

Shri I. Baig, Authorized Departmental Representative (SDR) for the Revenue and Shri Praveen Chauhan, Accountant for the respondents

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

Oral Order No. 85/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 69-CE/GZB/2007 dated 13.7.2007.

2. Heard the learned SDR. On behalf of respondent, written submission was filed and the same was produced by Shri Praveen Chauhan, representative of the respondent company.

3. The respondent has received DG set and tableting machine on 13.11.98. Apparently, they were availing exemption meant for small scale unit till 31.3.99. They filed declaration on 20.4.99 under Rule 57T and asked for condonation of delay in filing the application so that they could avail modvat credit on the said capital goods. The original authority held that the delay beyond three months cannot be condoned in view of specific provisions of Rule 57T(1) & (3).The said order has been set aside by the Commissioner (Appeals) in view of the amendment to Rule 57T by Notification No.7/99-CE(NT) dated 9.2.99 relaxing the rigours of procedure for availing credit. The said amendment prescribed that " *credit shall not be denied on the ground that the declaration filed under suh-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule (1)".*

4. The Department canvassed that the relaxation given by the amendment cannot be said to cover relaxation in terms of time limit prescribed under Rule 57T as above.

5. On behalf of the respondent in the written submission, it has been mentioned that they have claimed depreciation ~~in terms of~~ for the impugned capital goods under the Income Tax Act.

6. I have carefully considered the submissions. Inasmuch as the respondent has claimed depreciation under Income Tax Act for the capital goods, one of the conditions for availing benefit of modvat credit is not satisfied. On this ground, they are not eligible for the benefit of modvat credit. It was also submitted on behalf of the respondents that they have not availed Cenvat credit on DG set and tableting machine involved as evident from RT-12/ER-1 returns submitted to the Department from 1998 to this date. In other words, even if the appeal of the Department is not allowed, the respondent- assessee is not eligible for the modvat credit.

7. In the peculiar facts and circumstances of the case and in view of non-eligibility of credit on different ground, the appeal itself is infractuous and accordingly disposed of. It is clarified that the respondent is not eligible for the credit on a ground different from the ones urged by the Department in their grounds of appeal.

(M. Veeraiyan)
Member (Technical)

scd/