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/732 /2008 – SM[BR] Date 27/01/2010

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

To :
M/S HI-TECH MEDICAL PRODUCTS LTD.
AL-4, SECTOR-13, GIDA,DISTRICT GORAKHPUR (U.P)

M/S HI-TECH MEDICAL PRODUCTS LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 119 / 2010 –SM[BR] dated 20.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
   MR.J M SHARMA
   G-31, BASANT ENCLAVE, NEW DELHI

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)

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

Excise Appeal No. 732 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 218/ CE/ALLD/2007 dated 27.12.2007 passed by Commissioner of Central Excise (Appeals), Allahabad (UP)]

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?	:	Yes
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. Hi-Tech Medical Products Ltd. — Appellants

Vs.

Commissioner of Central Excise Allahabad — Respondent

Appearance:

Shri J.M. Sharma, Consultant for the Appellants
Shri S.Gautam, SDR for the Respondent

Date of Hearing/decision : 20.1.2010

ORAL ORDER NO. 119/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 218/ CE/ALLD/2007 dated 27.12.2007.

2. Heard both sides.

3. The appellants are manufacturing dutiable and exempted products. The appellants have cleared certain goods availing the benefit of exemption under notification No. 6/2003-CE dated 1.3.2003 (Sl. No. 223(A)). They admittedly do not maintain separate accounts in respect of inputs going into the exempted products and the dutiable products. During perusal of the records, it was noticed by the officers that the appellants have cleared goods worth Rs.32,68,655/- during the period from 19.1.2004 to 31.1.2005. Accordingly, original authority vide its order dated 8.9.05 demanded an amount of Rs.2,99,609/- in terms of Rule 6(3) (c). However, he did not impose any penalty. On appeal by the Department, the said order was set aside by an order of the Commissioner (Appeals) dated 20.3.07 with the direction to consider the penal action afresh. In pursuance of the said order of the Commissioner (Appeals), the original authority vide its order dated 11.7.07 imposed on the appellants a penalty of Rs.2,99,609/- under section 11AC of the Act which stands upheld by the Commissioner (Appeals).

4. Learned Advocate for the appellant submits that there was no suppression of any relevant facts from the Department; there was no allegation in the show cause notice revealing suppression of any relevant information except stating that the party never disclosed to the Department

the sale of exempted goods without payment of duty. This allegation in the show cause notice was without conducting any investigation and without any reference to any reports/ returns submitted by the appellant from time to time. The original authority vide its order dated 11.7.07 has relied on the earlier finding of the original authority dated 8.9.2005 that there was suppression of facts by the appellants. The original authority in its order dated 8.9.05 has not imposed any penalty. Under these circumstances, the observations in the said order has no significance. At any rate, the order of the original authority dated 8.9.2005 stands set aside to enable fresh consideration of the penal action against the appellants. Under these circumstances, there is no material relied upon by the present original authority in coming to the conclusion that there was suppression on the part of the appellants. Commissioner (Appeals) vide impugned order has held that "Once it has been held that duty is recoverable from the appellants after invoking extended period of limitation, the adjudicating authority has no discretion, but to impose penalty under section 11AC of the Act, which is equal to duty sought to be recovered." This conclusion of the Commissioner (Appeals) is erroneous. He submits that the appellants bonafidely paid the entire amount on being pointed out by the Department without contesting the issue on time bar. Such course of action should not be held against them for the purpose of taking penal action.

5. Learned SDR reiterates the finding of the Commissioner (Appeals). He also submits that once extended period of limitation is applied, it follows

that ingredients of section 11AC are present. He also adds that the duty was not paid under protest.

6. I have carefully considered the submission from both sides and perused the records. Learned Advocate fairly submits that they are not contesting the demand as well as order for recovery of interest. The show cause notice does not disclose the nature of suppression with reference to any particular provision of the Act or Rule. The finding that the appellants have not informed the Department about clearance of exempted goods does not seem to have been based on facts. Reliance has been placed by the original authority in its order dated 11.7.07 on the finding of the earlier order of adjudication dated 8.9.05 where no penalty was imposed and further order dated 8.9.05 has been set aside. Such reliance is not appropriate. Similarly, the assumption that merely because the appellants have not contested the demand on the question of extended period of limitation being invoked, the ingredients of section 11AC would be present is questionable. Such an inference by the Commissioner (Appeals) cannot be approved. No evidence of suppression has been relied upon in the show cause notice. Thus, except the presumption as above, no material indicating suppression of relevant information by the appellants have been relied upon.

7. In view of the above, the order of the Commissioner (Appeals) in sustaining the penalty of Rs.2,99,609/- cannot be upheld. The impugned order is set aside and appeal is allowed with consequential relief.

(M. Veeraiyan)
Member(Technical)

ss