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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/1082/2008 – SM[BR]    Date 03/09/2010

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

To :
M/S PANASONIC AVC NETWORKS INDIA CO. LTD.
(EARLER KNOWN AS M/S MATSUSHITA T.V. & AUDIO INDIA LTD.) C-52, PHASE-II, NOIDA, DISTT. GAUTAM BUDH Nagar (U.P)
201305

M/S PANASONIC AVC NETWORKS INDIA CO. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 940 / 2010 –SM[BR] dated 26.8.2010 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.RAJESH KUMAR
   24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

**COURT-IV**

**Date of hearing/decision:26.8.2010**

**Central Excise Appeal No.1082 of 2008-SM**

Arising out of the order in appeal No.37-CE/NOIDA/08 dated 25.2.2008 passed by Commissioner (Appeals), Customs & Central Excise, NOIDA.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

| | | |
|---|---|---|
| 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 |

M/s Panasonic AVC Networks India Co. Ltd. ... Appellant

Vs.

C.C.E., Meerut II ... Respondent

Appearance:

Shri Rajesh Kumar, Advocate for the appellant
Shri Mahesh Rustogi, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 940/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 37-CE/NOIDA/08 dated 25.2.2008.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant imported certain inputs and components and moulds and took credit of special additional duty of customs paid at 4% ad valorem on the imported goods. When the officers visited the factory on 1.11.2006 and pointed out that they were not eligible for the credit of special additional duty, the appellants promptly reversed the credit and paid the interest. A show cause notice was issued on 18.5.07 alleging irregular availment of credit proposing demand of duty (which stood already paid along with interest) and proposing imposition of penalty. The show cause notice also proposed a demand of Rs.13,765/- of wrongly availed credit of service tax which also stood paid before issue of show cause notice. The original authority in pursuance of the show cause notice confirmed the demand along with interest as proposed in the show cause notice and imposed an amount of Rs.1,54,890/-as penalty under Section 11AC. He also imposed penalty of equal amount on the Manager (Finance). Commissioner (Appeals) upheld the order of the original authority in so far as it relateed to the appellant company but set aside the penalty on the Manager of the company. The company is in appeal against the imposition of penalty.

4. Learned Advocate for the appellant submits that it is due to misunderstanding that they have taken credit as they were under impression that all additional duties paid are admissible as cenvat credit. He also submits that as soon as mistake was pointed out they promptly paid the duty involved. He submits that the details of credit taken stand included in the returns filed by them. As the wrongly taking of credit was under bona fide belief and the same ~~was~~ on being pointed out, the appellants promptly paid the duty along with interest, the show cause notice itself should not have been issued. At any rate, the imposition of penalty is not warranted.

5. Learned DR strongly supports the order of the Commissioner (Appeals). He draws my attention to the finding of the Commissioner (Appeals) that " ......... when the evasion is caught during checking and when

the evasion is of recurring nature", mandatory penalty is required notwithstanding the deposit of the amount before issue of show cause notice. He also relies on the decision of the Hon'ble Supreme Court in the case of UOI vs. Rajasthan Spinning & Weaving Mills reported in 2009 (238) ELT 3 (SC).

6. I have carefully considered the submissions from both sides and perused the records. No doubt, the appellants are not eligible to take credit of special additional duties at 4% levied under Section 3(5) of the Customs Tariff Act, 1975. The submission on behalf of the appellants was that in view of nomenclature of the levy of additional duties in lieu of sales tax and local levies being "additional duties" they have taken credit bona fidely as they believed that all additional duties were eligible as credit. The submission deserves to be accepted. Further, as submitted by them, details of credit taken were furnished by them in the returns submitted by them. This is a fit case that the Department should have refrained from issuing show cause notice in terms of Section 11A(2B) of the Act. I do not find any mala fide in the conduct of the appellants. Therefore, the question of invoking the provisions of Section 11AC to impose a mandatory penalty does not arise. The decision of the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills cited supra does not apply to the facts of the present case.

7. In view of the above, the appeal is allowed with consequential relief, as per law.

(M. Veeraiyan)
Technical Member

scd/