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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/2091/2008 – SM[BR] Date 05/10/2010

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

To :
M/S PANACEA BIOTEC LTD.,
B-1 EXTN. G-3, MOHAN CO-OP. INDL. ESTATE,
MATHURA ROAD, NEW DELHI.110044
M/S PANACEA BIOTEC LTD., Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1099 / 2010-SM[BR] dated 3.9.2010 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
MR.T R RUSTAGI,ADVOCATE
SD-84, TOWER APARTMENTS, PITAMPURA, DELHI -34
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)

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

Excise Appeal No. 2091 of 2008-SM(BR)

[Arising out of Order No. IV(16)TECH/PANCEA/DB/07/1605 dated 24.6.2008 passed by the Commissioner of Central Excise, Chandigarh]

For approval and signature:

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

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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? : 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

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M/s. Panacea Biotech Ltd. — Appellants

Vs.

Commissioner of Central Excise
Punjab — Respondent

Appearance: Shri T.R. Rustogi, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 3.09.2010

Final

ORAL ORDER NO. 1099/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the letter No. IV(16)TECH/PANCEA/DB/07/1605 dated 24.6.08 issued by Superintendent (Technical) communicating the decision of the Commissioner denying Cenvat credit on inputs / raw materials / packing material lying as such which was lost and damaged during the floods during 3.8.2003. (Learned Advocate states that there is clerical error and date is not 3.8.2003 but 3.8.2004).

2.1 Learned Advocate submits that there was flood on 3.8.200~~3~~4 and in the floods finished goods raw materials packing material etc. were damaged. The appellants sought for remission of duty under Rule 21 as follows:

Annexure	Product Type	Duty involved
I	Raw Material	284065.00
II	Packing Material	529217.00
III	Finished Goods	238044.00
	Total	1051326.00

2.2. Commissioner has granted the remission of Rs.2,38,044/- relating to finished goods but rejected the rest of the claim without giving an opportunity for representing by the appellants. When the remission has been sought for, the denial of the same results in demand of duty to the extent of denial of remission and, therefore, it was necessary that the Commissioner should have issued a show cause notice proposing denial of remission indicating the reasons for the same. No personal hearing was also given. He also submits that part of the inputs /packing materials on which remission is denied may relate to inputs issued for manufacture and the inputs contained in in-process material. In other words, if floods has damaged finished goods, packing materials, and inputs as such, and inputs in-process might have been damaged. In respect of inputs which have been issued for manufacture and destroyed subsequently, credit cannot be denied and demand raised in the light of the decision of the Tribunal in the case of Sabero Organics Gujarat Ltd. vs. CCE, Vapi reported in [2009 (236) ELT 281 (Tri- Ahmd)].

3. Learned SDR while agreeing that no personal hearing was granted by the Commissioner, he supports the order of the Commissioner that Rule 21 of the Central Excise Rules apply to remission of duty on the finished goods lost or destroyed by natural causes and not in relation to inputs or packing materials.

4. I find that the claim of the appellants that while there was damage of inputs and packing materials and finished goods there could have been damage of in-process material which contained inputs / packing material. I also find that the Commissioner while allowing remission on finished goods, denied remission on inputs / raw materials / packing material on the ground that Rule 21 of the Central Excise Rules does not relate to such inputs / raw materials / packing materials. However, the grievance of the appellants that such an order has been passed without following principles of natural justice deserves to be redressed. It is also claimed that duty stands paid

under protest and the protest has not been vacated by issue of speaking order. The claim of the appellants that they had no opportunity to rely on various decisions of the Tribunal which are in their favour on this issue also required to be noted.

5. In view of the above, I deem it appropriate to set aside the order dated 24.6.08 issued on behalf of the Commissioner of Central Excise, Chandigarh and direct the Commissioner to decide the matter afresh after granting reasonable opportunity of hearing to the appellants. All issues raised before the Tribunal may be raised before the Commissioner.

6. The appeal is allowed by way of remand as above.

(M. Veeraiyan)
Member(Technical)

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