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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/1112/2008 & 1114/2008 – SM[BR] Date 04/11/2010

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

To :
C.C.E. JAMMU

OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

C.C.E. JAMMU Appellant

Vs

M/S PHAROSE REMEDIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1147 -1148 / 2010-SM[BR] dated 19.10.2010 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 PHAROSE REMEDIES LTD.

NH -I PATLI MORH TARORE, BARI BRAHMANA, JAMMU

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 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)

2. M/S PHAROSE REMEDIES LTD.
NH -I PATLI MORH TARORE, BARI BRAHMANA JAMMU

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

Excise Appeal No. 1112 & 1114 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 311-12/CE/APPL/JAL/2007 dated 27.9.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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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? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

Commissioner of Customs & Central Excise, J & K, Jaummu — Appellants

Vs.

M/s. Pharose Remedies Ltd. — Respondent

Appearance:
Shri Anil Khanna, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 19.10.2010

Final **ORAL ORDER NO. 1147 - 1148/2010 SM(BR)**

Per Ashok Jindal:

Revenue has filed this appeal. The facts of the case are that the respondents are working under the notification No. 56/02 CE dated 14.11.02, and have paid the duty for the months of March to April, 2007 and claimed refund of Cenvat credit of duty paid through PLA. The adjudicating authority sanctioned the refund but did not put any comments for refund of education cess paid through PLA during these months. Aggrieved from such orders, the respondents preferred the appeal before the Commissioner (Appeals) who allowed their appeal. Aggrieved from the said order, Revenue is in appeal.

2. Despite notice neither any request for adjournment nor anybody on behalf of the respondent appeared before this Tribunal. From the records, it appears that earlier Shri K.K. Anand, was advocate for the respondent. But on the last date of hearing, he withdrew his vakalatnama and same has been allowed to be withdrawn. Now, the matter is taken up on merits.

3. Learned DR submitted that on the identical facts in the case of CCE, Jammu vs. Jindal Drugs Ltd. and others reported in [2010 (97) RLT 13 (CESTAT-Del), this Tribunal has held that refund of Education Cess paid though PLA is not admissible for the assessee who are availing the exemption under notification No. 56/02.

4. Heard. I have gone through the reliance placed by the learned DR and find that in the similar circumstances, this Tribunal has already decided

the issue in the case of CCE, Jammu vs. Jindal Drugs Ltd. (supra). Accordingly, following the same, I allow the appeals filed by the Revenue by setting aside the impugned order holding that the refund of Education cess paid through PLA is not admissible for the assessee availing exemption under notification No. 56/2002 CE dated 14.11.2002.

(Ashok Jindal)
Member(Judicial)

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