

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/187/2008-190/2008 - CU[DB]

Date 05/08/2011

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, 1
INDORE 452001 (M.P.)
C.C.E. INDORE

Appellant

Vs
Respondent

M/S MEDICAPS LTD.

I am directed to transmit herewith a certified copy of **Final order No.ST/332-335 2011 CU[DB]** dated
passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

M/S MEDICAPS LTD.
SECTOR-I, INDUSTRIAL
AREA,PITHAMPUR (M.P.)

2. Adv. / Consult

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

M/S MEDICAPS LTD.
SECTOR-I, INDUSTRIAL AREA,PITHAMPUR (M.P.)


Assistant Registrar
(Customs Appeal Branch)

m/s Avtec Ltd
Sector -III Pithampur (M.P.)

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

Service Tax Appeal No. 187 to 190 of 2008

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

1. Whether Press Reporters may be allowed to see : No.
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it should be released under Rule 27 : No
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair : Seen
copy of the Order?
 4. Whether Order is to be circulated to the : Yes
Departmental authorities?
-

Service Tax Appeal No. 187 to 188 of 2008

[Arising out of Order-in-Appeal No. IND-I/16 & 17 /2008 dated
17.1.2008 passed by the Commissioner of Customs & Central Excise
(Appeals), Indore]

Commissioner of Central Excise
Indore

Appellants

Vs.

M/s. Medicaps Ltd.

Respondent

Service Tax Appeal No. 189 to 190 of 2008

[Arising out of Order-in-Appeal No. IND-I/213 & 214 /2007 dated 31.12.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Indore]

Commissioner of Central Excise
Indore

Appellants

Vs.

M/s. Avtec Ltd.

Respondent

Appearance:

Shri R.K. Gupta, SDR for the Appellants
None for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 02.08.2011

Final ORAL ORDER NO. 57/332-335/11

Per Archana Wadhwa (for the Bench):

Both the appeals filed by the Revenue are being disposed of by a common order as ^{*actual position*} ~~final product~~ and the issue involved are identical.

After hearing the learned DR, we find that proceedings were initiated against the respondents by way of issuance of show cause notice ~~for~~ proposing denial of Cenvat credit of service tax and education cess paid on outward transportation of the excisable goods from the place of

removal to the place of customers. The said notices were adjudicated by the original adjudicating authority confirming the demand by denying the Cenvat credit. However, it is seen that during original jurisdiction, adjudicating authority did not impose any penalty on the respondents by observing as under:-

“However, imposition of penalty by invoking the provisions of Rule 15 of Cenvat Credit Rules, 2004 is unnecessary in the context, since the matter pertains to interpretation of the law. No mens rea is involved in the matter and as such there is no need to impose any penalty.”

2. The said order of the original authority was appealed against by the assessee as also by the Revenue. While dealing with the assessee's appeal, Commissioner (Appeals) observed that since show cause notices were issued beyond the normal period of limitation, they were barred by limitation. He observed that the details regarding the credit taken were being reflected in the monthly returns submitted by the assessee and therefore, even if any wrong credit has been taken, the same cannot be recovered by invoking the longer period. Accordingly, he directed the lower authorities to requantify the ineligible credit falling within the limitation period. In a nutshell, he allowed the appeal on point of limitation. As regards the Revenue's appeal, he observed that as the extended period of limitation has been held as not applicable, the

revenue's appeal on the point of penalty has no relevance. He, accordingly, rejected the same.

3. Being aggrieved by the above order of the Commissioner (Appeals), revenue has preferred the present appeals on the ground that the respondents in their monthly ER returns filed for the relevant period, have simply shown the ^{quantum} ~~quantity~~ of credit availed on inputs with specifying the service on which the said credit was availed. As such, they contended that it amounts to suppression from the department with intent to avail wrongful credit.

4. We find no merits in the above contention of the revenue. Admittedly the credit availed by the assessee was reflected in the monthly returns. If there is no ^{column} ~~avertment~~ in the monthly return to show the nature of service on which the credit was availed, the assessee cannot be blamed for not disclosing the said fact. For invoking the longer period of limitation, there has to be a suppression or mis-statement with an intent to evade payment of duty. When the respondents have reflected the amount of credit availed by them in their monthly returns, it cannot be said that there was any positive act of suppression or mis-statement on their part. As such, we are of the view that Commissioner (Appeals) has rightly held a part of the demands as barred by limitation.

5. We further, note that the original adjudicating authority, while not imposing any penalty on the respondents, have clearly concluded that

that there was no mens rea on their part. Having said so, we really fail to understand as to how longer period of limitation can be invoked against the appellants.

6. In view of the foregoing discussion, we find no merit in the revenue's appeal and therefore, reject the same.

(~~Archana Wadhwa~~)
Member(Judicial)

(Mathew John)
Member(Technical)

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