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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/1920/2009 – SM[BR]** Date **08/08/2011**

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

To :
M/S N.P.AGRO (I) INDUSTRIES LTD.
190, CIVIL LINES, BAREILLY,

M/S N.P.AGRO (I) INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 455 / 2011 –SM[BR]** dated 14.7.2011 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.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions 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 -
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 (Haryana)
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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/1920/09-SM

[Arising out of Order-in-Appeal No.131-CE/MRT-II/2009 dated 27.02.2009 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-II].

M/s. N.P. Agro (I) Industries Ltd. ...Appellant

Vs.

CCE, Meerut-I ... Respondent

Present for the Appellant : Shri Kapil Vaish, C.A.
Present for the Respondent :Shri Anil Khanna, DR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER

Date of Hearing: 14.07.2011

Final **ORDER NO.** 455/2011 SM **DATED:** ______

PER: D.N.PANDA

The precise question came in this appeal is whether for use of cenvat credit not available to the appellant during impugned period shall invite penal consequence under Rule 15 of Central Excise Rules 2002 subject to provisions of section 11AC of Central Excise Act 1944.

2. Ld. Advocate submits that there was no wilful breach of law to avail the credit wrongly but inadvertently that was availed with no intention to cause evasion to Revenue. He also

submits that if there is penalty, appellant shall not face such consequence in view of decision of Tribunal in the case of Laurel Wires Ltd. vs. Commissioner of Central Excise, Nasik reported in 2007 (213) ELT 697 (Tri.-Mumbai)

3. He further submits that if at all any proposition for penalty is made the case having fallen under rule 15 (2) of Cenvat Credit Rules 2004, provisions of section 11AC shall come into play. He claims leniency for waiver of penalty and if that is not possible, he prays for concessional penalty under First Proviso to Section 11AC of Central Excise Act 1944.

4. Ld. DR on the other hand says that Board Circular was very clear vide No.542/38/2000-CX dated 25.08.2000 guiding the assessee to pay duty for availing appropriate credit that is due at the time of payment of duty duly. When the appellant failed to discharge its duty for payment of duty duly and availed cenvat credit wrongly, which were not available to it under law in view of table annexed to the show cause notice available at page 37 of the appeal folder, the authorities have appropriately levied penalty.

5. Heard both sides and perused records.

6. There is no dispute as to the fact that the appellant availed cenvat credit to the extent not available to it as is

reflected by annexure A to show cause notice available at page 37 of the appeal folder. The quantum of undue credit availed ranged from period June, 2004 to February 2005 as fully described in Annexure to the show cause notice. Therefore, default of the appellant is established. The next question comes for penalising the appellant for default made. Looking to the magnitude of the availment of credit and the availment so made scientifically in different periods when credit was actually not available, appellant was liable to penalty for contravention of law causing evasion of duty. Now the question comes to determine the quantum. First proviso to section 11AC permits concessional penalty, when an assessee comes forward to discharge the duty and interest liability duly and also following the ratio laid down in the Hon'ble High Court of Delhi in para 27 of the judgement in the decision of K.P. Pouches reported in 2008 (228) E.L.T. 31 when it is noticeable that the appellant having discharged the duty liability as has been recorded by the adjudicating authority in para 5 of the show cause notice, the appellant is not disentitled to the concessional penalty which can be limited to 25% of the duty element. Consequently, the first appellate order is modified to grant concession in penalty to the aforesaid extent and appeal is partly allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita