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

Appeal No. E/2065/2011 - EX[DB]
E/S/2719/2011-EX

Date **03/02/2012**

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

To :
M/S PARSONS NUTRITIONALS PRIVATE LIMITED
PLOT NO 5, SITE-IV, INDUSTRIAL AREA,
SAHIBABAD,GHAZIABAD.

M/S PARSONS NUTRITIONALS PRIVATE LIMITED — Appellant
Vs
C.C.E. GHAZIABAD — Respondent

STAY ORDER NO. 153/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/73/ 2012 EX[DB]** dated 30-1-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 (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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.01.2011
Date of decision:24.01.2011

Excise Stay No.2719 of 2011 in
Appeal No.2065 of 2011

[Arising out of Order-in-Appeal No.93 to 94/ST/GZB/11-12 dated 30.05.2011 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

M/s. Parsons Nutritionals Pvt. Ltd. Appellant

Vs.

CCE, Ghaziabad Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

Appearance: Rep. by Shri Amit Jain, Advocate for the appellant.
Rep. by Shri R.K. Verma, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Judicial)
STAY orders. 153/2012-EX(BR)
FINAL Order No.A/73/2012-EX../Dated:24.01.2012

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty of Rs.19,18,505/-, we proceed to deal with the appeal itself with the consent of both the sides.

2. The appellants are engaged in the manufacture of biscuits on job work basis for M/s.Glaxo Smith Kline Consumer Healthcare Ltd. The biscuits manufactured by them are being cleared on payment of duty on MRP basis, in terms of the provisions of Section 4A of the Central Excise Act. The dispute in the present appeal revolves around the fact that at to whether the appellant is entitled to avail cenvat credit of service tax paid on the transportation of the goods from their factory gate to depot premises of M/s. Glaxo Smith Kline Consumer Healthcare Ltd. The lower authorities have denied the credit on the ground that the service tax paid on the outward transportation of the goods cannot be treated as input services so as to allow the credit.

3. Apart from the fact that the issue is prima facie covered by the decision of the Larger Bench of the Tribunal in the case of ABB Limited reported in 2009 (15) STR 23 and as affirmed by the Hon'ble Karnataka High Court

reported in 2011 (23)STR 97, we note that the Commissioner (Appeals) has set aside the penalty imposed upon the appellant by observing as under:-

> " With regard to the imposition of penalty of Rs.19,18,505/- under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 upon the appellants, I find that the issue involved is more in the nature of the interpretation of law and there are conflicting decisions of the Hon'ble CESTAT on the above issue of the availment of input service credit on outward transportation. Therefore, under the said circumstances, there appears to be no mala fide on the part of the appellants. Therefore, the imposition of the said penalty against the appellants is not warranted and hence the same is set aside. "

4. The demand in the present case stands raised and confirmed for the period April, 2005 to March, 2005 by raising a show cause notice dated 23.12.2009 i.e. by invoking extended period of limitation. The appellate authority while setting aside the penalty imposed upon the appellant has given a finding of there being no mala fide on the part of the assessee. The above said part of the impugned order of the Commissioner (Appeals) does not stand challenged by the Revenue. It is well settled that the circumstances for invocation of longer period as also for imposition of penalty are identical. If the findings of the Commissioner (Appeals) as regards penalty stands accepted by the Revenue, we find no reasons to attribute the appellant with imposition of penalty or mis-statement with a

mala fide intent. If that be so, the longer period of limitation cannot be invoked against the appellant. Inasmuch as the entire demand is beyond the normal period of limitation. We set aside the impugned order and allow the appeal with consequential relief to the appellant. The stay petition as also appeal gets disposed of in the above manner.

[Order dictated & pronounced in open court on 24.01.2012]

[Archana Wadhwa]
Member (Judicial)

[Sahab Singh]
Member (Technical)

Ckp.