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

Appeal No. ST/STAY/3238/2011 IN ST/1534/2011 - CU[DB] Date **20/03/2012**

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

To :
M/S SURYA PHARMACEUTICALS LTD.
VILLAGE BANUR, THESIL-RAJPURA,
DISTT. PATIALA PUNJAB.

M/S SURYA PHARMACEUTICALS LTD. Appellant

Vs

C.C.E. CHANDIGARH Stay Order No. ST/S/286/2012 Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/235/ 2012 CU|DB|** dated 14.03.2012 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
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY,
NEW DELHI-110024

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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.3238/2011 in ST/Appeal No.1534/2011

(Arising out of order in appeal No.80/ST/Appl/Chd.II/2011 dated 14.7.2011 passed by the Commissioner of Central Excise (Appeals),Chandigarh)

Date of Hearing: 14.3.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	No
2.	Whether it would 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 Department Authorities?	Yes

M/s Surya Pharmaceuticals Appellants

Vs

CCE, Chandigarh Respondent

Appeared for the Appellant: Shri Udit Jain , Advocate
Appeared for the Respondent: Shri Amresh Jain, DR

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

Final ORDER No. ST/A/275/12-Cus
Stay order No. ST/S/226/12-Cus

Per Archana Wadhwa:

After hearing both the sides on stay petition as also on appeal, we intend to dispose of the appeal itself with the consent of both the sides as the issue is lying in a narrow compass.

2. The short point required to be decided in the present appeal is as to whether the applicant can discharge service tax liability in respect of services received from abroad on reverse charge, ~~lying from~~ utilizing their cenvat credit from April 2008 onwards. The applicants have paid service tax to the tune of Rs. 1,99,823/- from their cenvat account. The DR states that in terms of proviso of Rule 5 of Taxable Services (provided from outside India and received in India) Rules, 2006 read with Cenvat Credit Rules, 2004, the service in question is not required to be considered as ~~outdoor~~ output services and as such, the credit ~~already~~ availed by the assessee cannot be utilized for payment of service tax on the said service. He submits that the issue stands clarified by Board's letter F No. B-1/4/06 dated 19.4.06, the said letter of the Board stands relied upon by the Commissioner (Appeals).

3. Learned Advocate appearing for the appellants submits that they are ready to discharge the service tax liability in cash provided service tax already paid by them from Cenvat credit amount is credited back to their account.

4. No objection by the learned DR to the above course of action.

5. We accordingly direct the appellant to pay the said service tax in cash and service tax already paid from their Cenvat account would be credited to the ~~cash register~~ credit account. It is further seen that in terms of the Board's letter referred to in the impugned order in appeal, the service tax paid in cash is available as input credit to the appellant in terms of the Cenvat Credit Rules, 2004. As such, the appellant would again be entitled to the credit of service tax paid by them in cash.

6. At this stage, the issue of interest arises. In as much as, the duty required to be paid in cash was not so paid, the appellant would be liable to pay interest. The lower adjudicating authority would calculate the interest in accordance with law and the appellant would pay the same. The stay petition as also the appeal get disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*