

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad  
Appeal No : E/14-15/2012**

**(Arising out of OIA-CS/114/DMN/VAPI-I/2011-12 Dated 29.11.2011 passed by  
Commissioner (Appeals) of Central Excise, Customs and Service Tax-DAMAN)**

- 1. M/s Sidmak Laboratories (India) Pvt Limited**
- 2. Uday Ratilal Shah : Appellant (s)**

**Vs**

**Commissioners of Central Excise, Customs and Service Tax-DAMAN : Respondent (s)**

Represented by:

For Appellant (s) : Shri Aditya Tripathi, Advocate

For Respondent (s): Shri T. K. Sikdar, Authorised Representative

For approval and signature :

Mr. P.K. Das, Hon'ble Member (Judicial)

1. Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

No

2. Whether it should be released under Rule 27 of 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

CORAM :

Mr. P.K. Das, Hon'ble Member (Judicial)

**Date of Hearing / Decision : 25.02.2016**

**ORDER No. 10133-10134/2016 Dated 25.02.2016**

**Per : Mr.P.K. Das,**

Heard both sides and perused the case records.

2. The appellant company was engaged in the manufacture of Pharmaceutical Products classifiable under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985. The Central Excise officer during the course of visit, noticed that the appellant availed CENVAT credit on capital goods and shifted the machinery to their sister unit, which is also engaged in

the manufacture of same final product. However, in order to avoid litigation, the appellant immediately reversed the credit along with interest at the instance of the Central Excise Officers. The Adjudicating Authority appropriated the amount of duty along with interest as deposited by the appellant company and also imposed penalty equal amount of duty under Section 11 AC of the Central Excise Act, 1944. It has also imposed penalty of Rs. 2 Lacs on Shri Uday Ratilal Shah, Director of the appellant company. By the impugned order, Commissioner (Appeals) upheld the adjudication order.

2. The Learned Authorised Representative on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant reversed the credit after detection by the Central Excise Officers, and therefore, imposition of penalty under Section 11 AC is warranted. The Learned Advocate submits that the other sister unit is also manufacturing excisable goods, and therefore, there is no evasion of duty. It is also submitted that the appellant was under bonafide impression that credit is not required to be reversed on the machinery was used in their sister unit, who has also manufacturing excisable goods. So, the imposition of penalty under Section 11 Ac is not warranted.

3. I find that the appellant shifted the machinery from their registered premises without reversal of the credit. The Central Excise Officers detected the irregularity and thereafter, the appellant reversed the credit. Hence, imposition of penalty under Section 11 AC is warranted. However, I agree with the submission of the learned Advocate that the appellant paid the duty along with interest before issue of show cause notice and they are entitled option to pay penalty 25% of the duty. I find force in the submission of the learned advocate that the appellant No. 2 Director of the company had cooperated with the Department and reversed the credit and imposition of penalty of Appellant No. 2 is unjustified.

4. In view of the above discussion, the demand of duty along with interest and penalty on the appellant company is upheld, subject to the appellant is entitled to pay penalty 25% of duty along with entire duty and interest, within 30 days from the date of communication of this order. The penalty imposed on the appellant No. 2 Shri Uday Ratilal Shah is set-aside. The appeal filed by the Appellant No. 2 is allowed. The appeal filed by the appellant company is disposed of in the above terms.

**(Dictated and pronounced in the Court)**

**(P.K. Das)**

**Member (Judicial)**