

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12478 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-188-2019-20 dated- 25/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

ALEMBIC LTD

Alembic Road
Vadodara
Vadodara, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-VADODARA-I

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

.....Respondent

Appearance:

Shri Saurabh Dixit, Advocate appeared for the Applicant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A / 11302 /2022

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 06.10.2022

RAMESH NAIR

The issue involved is whether the appellant is entitled for cenvat credit in respect of outward GTA .

2. Heard both sides. I find that as per the submission of Shri Saurabh Dixit, Learned Counsel and on the perusal of record it is undisputed that the nature of transaction is on FOR basis and freight is included in the assessable value on which excise duty was discharged, no separate recovery of the freight was made by the appellant from their customers .For the ready reference I reproduce the sample copy of purchased order and corresponding invoice.

COMPANY DETAILS		Order Confirmation	
ALEMBIC PHARMACEUTICALS L		Order Number/Date	
Vadodara		9527816 / 22/05/2008	
Control No.: 999		Purchase Order Number/Date	
Order Booked by : RAZDAN ANSHU		20 / 22/05/2008	
CIN :		Delivery date	
Ship-to address		Day-26.05.2008	
Surien Pharmaceuticals Pvt. Ltd.		Sold-to address	
108, Chekkadi Street		Surien Pharmaceuticals Pvt. Ltd.	
Kovur		108, Chekkadi Street	
602101 CHENNAI		Kovur	
INDIA		602101 CHENNAI	
Enquiry No:		INDIA	

DETAILS OF PACKING REQUIREMENTS			
SRL	PRODUCT CODE AND DESCRIPTION	PACKGNG DESCR.	QUANTITY UNIT
00001004050000	NITAZOXANIDE	1KG = 1KG	101.930 KG
FREE SAMPLES :			
CUSTOM SAMPLES:			
CONTAINER SAMPLES:			
PHYSICIAN SAMPLES:			
SPECIAL NOTE:			
EXPIRY PERIOD:			
LABELS :			
Payment terms : 90 days credit from the date of dispatch			
Incoterms : FOR CHENNAI			
1. Benefit Schedule Reference :			
2. Foreign Bank :			
3. Strong Export Packing :			
4. Name of Inspection Agency :			
5. Place of Inspection :			
6. Shipment/IMP Lic. Last Date : 22/05/2008			
7. Batchwise Analytical Report :			
8. Ceilling wght. of each case :			
9. MODE OF EXPORT :			

00001004050000	NITAZOXANIDE	101.930	KG2631.66	INR	268,244.63
ZROO Selling Price		2,300.00	234,439.00		
ZBCM Commission bulk		0.75	1,758.29		
COMMISSION AGENT : JANANI PHARMACEUTICALS PVT LTD., CHENNAI					

Original For Buyer/ Duplicate for Transporter/ Triplicate for Assessee

ALEMBIC LIMITED
EXCISE INVOICE
REMOVAL OF EXCISEABLE GOODS FROM FACTORY RULES 11, OF C.E.RULES,2002

PAGE 1 of 1

JEN :

EXCISE INV.SR.NO.: 0000090471

NAME & ADDRESS OF ASSESSEE ALEMBIC LIMITED ALEMBIC ROAD,VADODARA-390 008 TEL: (0265) 2280550,2280880 FAX: (0265) 2282934,2281488 E-MAIL: ALEMBIC@ALEMBIC.CO.IN	CENTRAL EXCISE RANGE OFFICE (SUPTD OF CENTRAL EXCISE) RANGE - VI,DIV.II,VADODARA-1, 6TH FLOOR, CENTRAL EXCISE & CUSTOMS BLDG., RACE COURSE CIRCLE,	CENTRAL EX.DIV.OFFICE CENTRAL EXCISE BUILDING 4TH FLOOR, DIVISION-II, RACE COURSE CIRCLE, VADODARA - 390 007.	*AUTHENTICATED BY FOR ALEMBIC PHARMACEUTICALS LIMITED ALEMBIC LIMITED
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DATE OF REMOVAL: 26.05.2008 TIME OF REMOVAL: NAME & ADDRESS OF CONSIGNEE: Sunen Pharmaceuticals Pvt. Ltd. 108, Chekkadi Street Kovur CHENNAI ECC-AAIC56002KXM001	NAME OF TRANSPORTER MODE OF TRANSPORT TRUCK NO./REG.NO.: LR NO.: DATE :	EXMP.NOTIF.NO. EXMP.NOTIF.DT. DATE OF PREPARATION: 26.05.2008 TIME OF PREPARATION : 10:49:36 DATE : 05.06.2008 CST : 801099 DT. 01.03.05 LST :
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SR.NO.	MATERIAL CODE	MATERIAL DESCRIPTION			BATCH	PACKING	CHAPTER HEADING	
CASE NO.S	QUANTITY	RATE WITH EXCISE	RATE W/O EXCISE	ASSESSABLE RATE	ASSESSABLE VALUE	DUTY RATE%	TOTAL DUTY PAYABLE	TOTAL GOODS VALUE
1	04050000	NITAZOXANIDE			10018775	KG	29339900	
	22.930	2,622.00	2,300.00	2,300.00	52,739.00	14.00	7,383.00	60,122.00
2	04050000	NITAZOXANIDE			10018833	KG	29339900	
	79.000	2,622.00	2,300.00	2,300.00	181,700.00	14.00	25,438.00	207,138.00

TOTAL QTY : 101.930
TOTAL DUTY: Rupees THIRTY-THREE THOUSAND EIGHT HUNDRED SIX paise ZERO ONLY
TOTAL VALUE: Rupees TWO LACS SIXTY- EIGHT THOUSAND TWO HUNDRED FORTY-FIVE paise ZERO ONLY

EXCISE DUTY	14.00%	32,821.00	234,439.00
EDUCATION CESS	2.00%	657.00	32,821.00
S & HEC	%	328.00	657.00
TOTAL DUTY		33,806.00	268,245.00

*PRE-AUTHENTICATION IS EXEMPTED VIDE TRADE NOTICE NO.38/88 DATED 08/06/88 (NOTIFICATION NO.15/88),PERMISSION GIVEN VIDE ASSISTANT COMMISSIONER-DIVN-II LETTER NO.F.NO :V/30(Z)MODVAT/MSC/88 PT.14896 DATED 08.10.88 CERTIFICATE.

CERTIFIED THAT PARTICULARS GIVEN ABOVE ARE TRUE AND CORRECT AND THE AMOUNT INDICATED REPRESENTS THE PRICE ACTUALLY CHARGED AND THAT THERE IS NO ADDITIONAL CONSIDERATION FLOWING DIRECTLY OR INDIRECTLY FROM THE BUYER.

FOR ALEMBIC LIMITED

AUTHORISED Signatory

From the above, it is clear that the sale of the goods is on FOR and the freight is included in the assessable value no separate charge was made on account of freight. In the given fact the tribunal has taken a view in the case of Ultratech Cement Ltd – 2019 (2) TMI 1487 – CESTAT-Ahmd and Sanghi Industries Ltd – 2019 (2) TMI 1488 (Tri. – Ahmd) that the credit on outward GTA is admissible.

3. Following the decision of this Tribunal which was upheld by Hon'ble High Court of Gujarat, I am of the considered view that the appellant is entitled for the Cenvat Credit in respect of outward GTA.
4. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta