CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 17/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70114/2016 SM dated 06/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1208/2009	GLAXO SMITH KLINE PHARMACEUTICALS LTD 252, DR.ANNIE BESANT ROAD MUMBAI

Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD CGO COMPLEX-B, KAMLA NEHRU NAGAR,GHAZIABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH RAJ KUMAR,FCA
C-18, PAWAN PLACE
SAMAD ROAD, ALIGARH

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithiyaram 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

<u>Ex. Appeal No.1208/09</u>

Arising out of OIA No.33-CE/GZB/2009 dated 30.01.2009 passed by the Commissioner (Appeals-I), Central Excise & S.Tax, Ghaziabad

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Glaxo Smith Kline Pharmaceuticals Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Gaziabad

RESPONDENT (S)

APPEARANCE

Shri Raj Kumar, FCA, for the Appellant (s)
Shri H. M. Dixit, Asstt. Commissiner (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

<u>DATE OF HEARING & PRONOUNCEMENT : 06. 11. 2015</u>

Final <u>ORDER NO. 70114 / 2016 SM</u>

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपील अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The Appellant M/s Glaxo Smith Kline Pharmaceuticals Ltd., is in Appeal against Order-in-Appeal No. 33-CE/GZB/2009 dated 30.01.2009 passed by the Commissioner (Appeals-I), Central Excise & S.Tax, Ghaziabad, whereby the rejection of refund is upheld on the ground of unjust enrichment.

2. The brief facts are that the appellants have imported formulation/medicines falling under Chapter Heading No.30.03 and marketed the same after labeling or re-labeling. During the month of September, 2001 & December, 2001, the officers of DGCEI, New Delhi detained the above goods valued at Rs.22,04,157/- involving duty Rs.16,45,396/- from the premises of M/s Niti Enterprises, Meerut Road,Ghaziabad, the C & F Agent of the appellant. During the course of investigation, the appellants deposited duty amounting to Rs.13,28,000/- under protest. Two show-cause notices dated 03.04.2002 and 08.05.2003 were issued. The show-cause notice dated 03.04.2002 was adjudicated vide OIO No.26/04-05 dated 28.10.2004 by the Assistant Commissioner, Central Excise, Division II, Ghaziabad, wherein goods were confiscated and redemption fine of Rs.10,00,000/- was imposed and a penalty of Rs.1,00,000/- was imposed on the partner of the C & F Agent. Show-cause notice dated 08.05.2003 was adjudicated vide OIO No.21/31.03.2004 by the Joint Commissioner, Central Excise, Ghaziabad, wherein demand of duty amounting to Rs.16,45,396/- was confirmed and a penalty of Rs.5.00 lakh each was imposed on the appellants and the C & F Agent, M/s Niti Enterprises. The appellants filed appeals with the Commissioner (Appeals), Ghaziabad who vide Orders In Appeal No.41-47/05 dated 28.03.2005 set aside the above two Orders-in-Original. Consequent to the above appellate orders, the appellants filed the refund claim for Rs.13,28,000/-. After granting due opportunity of personal hearing, the adjudicating authority

sanctioned the refund claim vide impugned Order-in-Original. As it was held that the claim was hit by the clause of unjust enrichment, the same was credited to the "Consumer Welfare Fund".

3. The issue before the Tribunal is that in the facts and circumstances of the case, the appellant had deposited the amount before issue of SCN and before effecting sale and pursuant to order of the Commissioner (Appeals), it was held that no excise duty is exigible on the imported formulation/medicines, imported for trade. The said order had attained finality. Whether the refund of the said amount attracts the doctrine of unjust enrichment when admittedly the goods in question (medicines) were destroyed due to expiry of time, and no transfer of title ever took place.

4. Heard the parties.

5. Having considered the rival contentions I find that the amount in question was deposited prior to issue of show cause notice. The appellant had debited the amount to their profit and loss account. It is admitted fact that the goods were not transferred or consumed by the appellant. The ld. DR has relied on the ruling of Honourable Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. Vs. CCEx. & CC : 2005 (181) ELT 328 (SC), wherein it was held that some exemption/rebate was available to the assessee under notification number 257/76 dt.30.09.1976 which provided for exemption from payment of Excise duty leviable thereon in excess of average production of sugar during the period of preceding three years. The notification also provided that the exemption would be on sale of sugar, as levy sugar and free sale sugar.. The assessee had claimed refund for the financial year 1976-77. The Asstt. collector had rejected the refund claim of the Appellant holding that the claimant had already charged and collected the duty amount from its customers and as such, it was not entitled to claim the said amount and accordingly the amount refundable was transferred to

Consumer Welfare Fund. Under such circumstances the Apex Court held that the doctrine of unjust enrichment is based on equity and has been accepted and applied in several cases. It was further opined, irrespective of applicability of section 11B of the Act the doctrine, can be invoked to deny the benefit to which a person is not otherwise entitled.

6. I hold that in the facts of the present appeal there being no transfer and an admitted destruction of the goods in question the doctrine of unjust enrichment is not attracted. Accordingly I set aside the impugned order and hold that the appellant is entitled to refund. The adjudicating authority is directed to disburse of the amount of refund within a period of 60 days from the date of receipt of a copy of this order, with interest as per Rules.

7. That the appeal is allowed.

(Pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

mm

प्रमाणित प्रति / Certified True Copy
6.6.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001