

FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

Dated: 08/07/2016

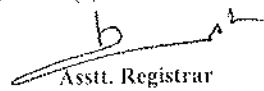
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70355-70359/2016-EX[DB] dated 30/06/2016

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
1	E/345-348/2006	J.K. DRUGS & PHARMACEUTICALS LTD. UPSIDC INDL. AREA BIJNORROAD GAJROLA.
2	E/1973/2008	JK DRUGS & PHARMACEUTICALS LIMITED (NOW M/S FENNER(INDIA) LTD) 3, BAHADUR SHAH ZAFAR MARG, N DELHI.
3		Name and Address of Respondent -C.C.E. MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s): SH V.L.KUMARAN, ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

5 Bar Association, CESTAT, Allahabad

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

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

8 Company Law Institute of India Pvt. Ltd., No.2 (old no 36), Vaithyaram Street, T. Nagar, Chennai-1 /

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

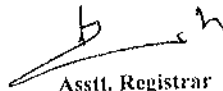
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkardooma Court, Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File


Asstt. Registrar

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Ex. Appeal Nos.345-348/06 & 1973/08

Arising out of O/A Nos.305-308-CE/MRT-II/2005 dated 16.12.2005 & 88/CE/MRT-II/2008 dated 30.05.2008 both passed by Commr. of Central Excise & Customs, Meerut II.

For approval and signature:

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

-
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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental Authorities? : Yes
-

M/s J. K. Drugs & Pharmaceuticals Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Customs, Meerut II

RESPONDENT (S)

APPEARANCE

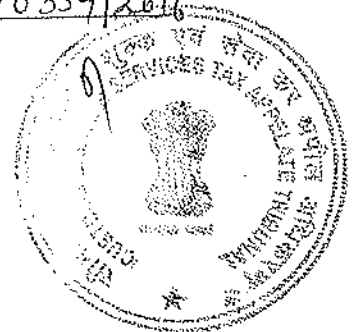
S/Shri Atul Gupta & Hrishikesh, both Advocates for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30.06.2016

Final ORDER NO. 70355-70359/2016



Per Mr. Anil G. Shakkarwar :

These 5 (five) appeals are filed by M/s J.K. Drugs & Pharmaceuticals Ltd. against the order of the Ld. Commissioner (Appeals) of Central Excise & Customs, Meerut II. The Ex. Appeal Nos.345-348/2006 are challenging the Order-in-Appeal Nos.305-308-CE/MRT-II/2005 dated 16.12.2005 passed by Commr. of Central Excise & Customs, Meerut II and Ex. Appeal No.1973/2008 is arising out of Order-in-Appeal No.88/CE/MRT-II/2008 dated 30.05.2008 passed by Commr. of Central Excise & Customs, Meerut II.

2.1 Brief facts of the case are that the appellants, M/s J. K. Drugs & Pharmaceuticals Ltd., are manufacturers of bulk drugs falling under Chapter 28 & 29 of schedule to Central Excise Tariff Act, 1985. During the period from November, 1995 to July, 1996, the appellants availed modvat credit on inputs used in the manufacture of their final product. The final products were exported under bond and as provided under Rule 57F (13) of Central Excise Act, 1944, they filed refund of accumulated modvat credit through four applications dated 23.04.1996, 20.08.1996, 01.11.1996 and one more application dated 01.11.1996.

2.2 The Assistant Commissioner of Central Excise, Muradabad Division, issued ^{to them} ~~from~~ SCN No.V(18)/112/REF/96/1480-1481 dated 01.06.1999. The contention in the said SCN was that through Notification No.6/97 (NT) dated 01.03.1997, un-utilized modvat credit available with the manufacturer as on 1st March, 1997, would lapse. In view of the same, it was contended that since, the entire credit was lapsed, no credit was left with the appellants to be refunded against

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the four applications filed under Rule 57F (13) by the appellants. So, it was proposed in the said SCN that their claims would be rejected. The appellants submitted their reply to the SCN stating that the same provision related to lapse of un-utilized modvat credit as on 1st March, 1997, is not applicable to them, since their refund applications were submitted much before said date and ^{had} ~~have~~ they been cleared promptly, they would have got their refund out of the accumulated modvat credit. The original authority through the Order-in-Original No.5/Ref/MBD/99 dated 16.08.1999 rejected all the above stated four applications for refund stating that the modvat credit stands lapsed on 1st March, 1997.

2.3 The appellants carried the matter before the Id.Commissioner (Appeals). Through his Order-in-Appeal No.104-CE/MRT/2002 dated 29.04.2002, it has been held that refund could not be sanctioned due to deficiency in the applications before the credit lapsed on 01.03.1997 and upheld the said Order-in-Original.

2.4 The appellants preferred the appeals before this Tribunal. This Tribunal through its Final Order No.A/248/03 dated 14.05.2003, held that since the refund applications were filed before 01.03.1997, refund was admissible to appellant. This Tribunal set aside the order-in-appeal dated 29.04.2002 and allowed the appeals with consequential relief.

2.5 The Revenue preferred an SLP before the Hon'ble Supreme Court against this Tribunal's Order dated 14.05.2003. The Hon'ble Supreme Court vide its Order dated 06.02.2004 dismissed the said SLP, bearing No.Petition (s) for Special Leave to Appeal (Civil).....CC 947/2004.

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Subsequently, the appellants filed various letters to the departmental authorities for implementation of this Tribunal's Order dated 14.05.2003. Subsequently, the appellants filed the Misc.Application before this Tribunal with a prayer to implement the Tribunal's Order dated 14.05.2003. This Tribunal decided the said Misc.Application through its order dated 08.09.2004, wherein directions were issued to Revenue to sanction the refund as ordered through Final Order dated 14.05.2003 and also to pay interest at the applicable rate from the expiry of three months after the date of filing of applications for refund till the date of payment.

2.6 In the mean time, the Assistant Commissioner of Central Excise, passed four orders, bearing Nos.41/04, 42/04, 43/04 and 44/04 all dated 03.09.2004 granting partial refund. Since the partial refund was granted, the appellants preferred an appeal against the said four orders passed in 2004 before the Id.Commissioner (Appeals). In the mean time, The Revenue carried this Tribunal's Order dated 08.09.2004 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has decided the said matter through Civil Appeal No.1541 of 2005 and gave its ruling on the said Order as reported in 2005 (182) ELT 310 (SC) (in the case of Commr. of Central Excise Vs. J. K. Drugs & Pharmaceuticals Ltd). For better appreciation, the said order is reproduced below :

"Delay condoned.

2. Issue notice.

3. Learned Counsel for the respondent appears and takes notice.

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4. With the consent of the learned Counsel for the parties, the matter is heard finally.

5. Leave granted.

6. Vide judgment dated 14-5-2003 the Tribunal disposed of an appeal, the operative part whereof reads as under, .

"The Larger Bench has thus divided the period into two parts -

(1) cases where refund claim has been filed prior to 1-3-1997 in which situation refund is admissible; (2) cases where refund claim has been filed on or after 1-3-1997 in which situation the refund will not be allowable as Modvat Credit stands lapsed on 1-3-1997. As in the present matter, the refund claims have been submitted much prior to 1-3-1997, they are entitled for the same. Accordingly, we set aside the impugned order and allow the appeals with consequential relief."

7. The Revenue filed a special leave petition against the said order which was dismissed by this Court on 6-2-2004.

8. It appears that a grievance was raised before the Tribunal that refund in compliance with the order of the Tribunal which has achieved finality is not being granted. By the impugned order, the Tribunal has directed the Revenue to grant refund of the amount with interest within six weeks from the date of the order.

9. The submission made by the learned Solicitor General appearing for the Revenue is that in the judgment dated 14-5-2003 the Tribunal had adjudicated upon the legal issue only and the factual aspect leading to quantification of amount of refund was not gone into. It is further submitted that there are subsequent orders passed by the Assistant Commissioner whereby the amount has been quantified and the factual aspects relating to entitlement as to refund have been taken care of. Four such orders are dated 3-9-2004 (Annexure-P8 (Colly)). It is further pointed out that the orders dated 3-9-2004 have been put in issue by the respondent by filing appeals before the Commissioner (Appeals) and therein the correctness of the orders passed by the Assistant Commissioner is being

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examined. The learned Solicitor General submits that either the Tribunal should have awaited for the decision by the Commissioner (Appeals) or else should have itself examined whether the orders in the matter of quantification, examining the factual aspects, passed by the Assistant Commissioner were correct or not without which a blanket direction for refund could not have been made.

10. We find merit in this submission. Inasmuch as the order of the Tribunal impugned herein does not reflect these factual questions having been gone into by the Tribunal, the impugned order dated 8-9-2004 is set aside. The case is sent back to the Tribunal. The Tribunal may, as advised, either await the orders of the Commissioner (Appeals) in the matter of quantification of refund or else may itself go into the question and quantify the amount of refund. In the event of the Tribunal arriving at a finding that some amount is due and payable to the respondent by way of refund and the Revenue has unreasonably withheld the refund then the amount may be directed to be refunded with interest, may be compound interest, depending on the opinion formed by the Tribunal. The appeal stands disposed of in the abovesaid terms.

11. Parties through their respective learned counsel are directed to appear before the Tribunal on 28th March, 2005".

The matter was remanded to this Tribunal by the Hon'ble Supreme Court through the above stated order.

2.7 The appellants moved a Misc.Application before this Tribunal in the matter which was remanded through the above stated order. The Misc.Order No.M/101/2005 dated 09.05.2005 was issued by this Tribunal dismissing the said Misc.Application on the ground that the adjudicating authority had already passed an appealable order which was under appeal with the Id.Commissioner (Appeals). The said appeals before the Id.Commissioner (Appeals) were decided through

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Order-in-Appeal Nos.305-308-CE/MRT-II/2005 dated 16.12.2005, wherein the Id.Commissioner (Appeals) held that the Order Nos.41/2004 to 44/2004 dated 03.09.2004, were passed in violation of principle of natural justice. He remanded the matter in all the four Order-in-Original for re-adjudication following principle of natural justice and for re-quantification of amount of refund in the light of the direction of the Hon'ble Supreme Court. Against the said Order-in-Appeal dated 16.12.2005, Ex.Appeal Nos.345-348/2006 are filed before us.

2.8 In compliance to above stated Id.Commissioner (Appeals)'s Order dated 16.12.2005, the ^{Id} Deputy Commissioner, Hapur Division, passed Order-in-Original No.173 (96/97 Pt.) DC/HPR/2007 dated 18.12.2007. For quantification, the original authority has taken into consideration four aspects, which are as under :

- (i) limitation;
- (ii) non-availability of certain documents to establish exports;
- (iii) Two refund claims were filed on the same date ;
- (iv) Change in formula for quantification of the quantum of

modvat credit admissible for refund taking into consideration the total turnover and turnover related to export.

After deliberation, the ^{Id} Dy.Commissioner granted refund of certain amount rejected before remand order and reduced certain amount granted before the remand order-in-appeal of the appellants and refused to discuss the interest and adjusted the amount of refund earlier granted including the interest earlier granted.

2.9 In the first round of litigation before the original authority, all the refund claims were rejected. In the second round of litigation, out of the total refund claimed in four applications totaling to Rs.1,87,06,765/-, an amount of Rs. 29,79,940/- and interest of Rs.27,78,100/- was granted. In the third round of litigation, the Order-in-Original dated 18.12.2007, the total sanction refund amount comes to Rs.69,91,409/-, which includes refund sanctioned during second round of litigation. Against the said order dated 18.12.2007, the appellants filed the appeal before the Id.Commissioner (Appeals) who through his Order-in-Appeal No.88/CE/MRT II/2008 dated 30.05.2008, decided the said appeals and upheld the order-in-original dated 18.12.2007. The appellant preferred appeal bearing No.E/1973 of 2008 against the said Order-in-Appeal dated 30.05.2008.

3. Now, the grounds of appeals are that quantification was done as ordered by the Hon'ble Supreme Court. However, the parameter taken for deciding admissible or inadmissible modvat credit for refund, are not as per law. Some of the credit was denied stating that it is hit by limitation as provided under Section 11B of Central Excise Act, 1944. Some of the modvat credit was denied stating that the documents, such as, shipping bills etc. were not available, whereas the fact is that the goods were exported, bank realization was submitted and the proof of export were issued by the competent authority and the bond through which export under bond, was allowed and ^{released} realized after acceptance of proof of export. It was further contended that one of the refund claim was rejected stating that more than one refund claim was filed in the same quarter. Further, there are many rulings

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that the filing of one refund application in a quarter, is part of the procedure and not substantial provision and they further contended that the change in the formula as accepted by the Revenue for deciding the quantum of modvat credit admissible for refund from the total turnover and turnover for export is acceptable to them.

4. Heard the Id.Counsel, who reiterates the above submissions. He has submitted case laws in the case of Hotline Teletube & Components Ltd. Vs. Commr. of Central Excise, Indone reported at 1998 (102) ELT 33 (Tribunal).

5. The Id.A.R. for the Revenue has reiterated both the impugned orders-in-appeal.

6. We have taken into consideration the rival contentions. We have also gone through the directions of the Hon'ble Supreme Court in this case. In the first round of litigation, the quantification to arrive at admissible, quantum of modvat credit, to be refunded, was not examined. As stated above, subsequently, ~~it was examined~~ the criteria for rejecting the claim taken by the original authority, is challenged before us. We find that under Notification No.85/87 (NT) dated 01.03.1987, the limitation under Section 11B of the Central Excise Act, 1994, is provided. Further, under Section 11B, the relevant date for such type of refund, is not specified. Therefore, in the absence of any relevant date, limitation period could not have been calculated by the original authority. Therefore, we hold that the quantum of modvat credit rejected to be refundable on the ground of limitation, is not sustainable in law. We have also examined the refund rejected on account of non-availability of shipping bills. The

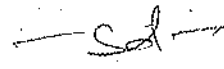
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appellants have contended that when the first show-cause notice was issued, such ground was not taken. Further, the purpose of shipping bill, is to establish export. The proof of export was accepted. The bond was released. After proof of export was accepted, the importance of filing of shipping bill, does not remain valid. Therefore, we hold that the quantum of modvat credit rejected on the ground of non-submission of shipping bills, is also not sustainable in law. By following the precedent decision of this Tribunal in the case of Hotline Teletube & Components Ltd. (supra), we hold that more than one refund claim can be filed in a quarter. Therefore, the original authorities' findings that because of filing more than one refund claim in one quarter, rejection of one refund claim, is not sustainable in law.

7. As observed above, we remand the matter back to the original authority to quantify the modvat credit refundable following above stated observations and refund the same within three months from the date of receipt of this order. Further, interest at the rate notified under Section 11BB of Central Excise Act, 1944 at the relevant time, shall also be paid within three months from the date of receipt of this order.

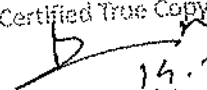
(Dictated and pronounced in the open Court)


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy


14.7.16
सहायक नजदीगर / Asst. Registrar
सीमाशुल्क, कलामशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, अलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001