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

To

Dated: 18/1/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70030/2016 dated 13/1/2016

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
	E/3942/2006	CHEMTECH PHARMACEUTICALS 42, MAINPUR MEERUT ROAD GHAZIABAD.
	Name and Address of Respondent	CCE, GHAZIABAD CGO COMPLEX-II KAMLA NEHRU NAGAR GHAZIABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, ~~Delhi~~ 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), 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, 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

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 13.01.2016

Excise Appeal No. E/3942/2006

[Arising out of the Order-in-Appeal No.145 & 146-CE/GZB/2006 dated-19.09.2006 passed by the Commissioner (Appeal), Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

M/s.

Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?
Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
Whether their Lordships wish to see the fair copy of the Order?
Whether Order is to be circulated to the Departmental authorities?

Chemtech Pharmaceuticals

..Appellant

Vs.

C.C.E., Ghaziabad ..... Respondent

Appearance:

Shri Rajesh Chibber (Advocate)

for the appellant

Shri M.K. Mall, (Assistant Commissioner), A.R..

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 70030/2016

Per: Mr. Mr. H.K. Thakur

This appeal has been filed by the appellant against Order-In-Appeal No. 145 & 146/CE/GZB/2006 dated-19/09/2006 passed by Commissioner (Appeals), Ghaziabad.

2. Appearing on behalf of the appellant Shri Rajesh Chibber (Advocate) argued that first appellant authority has set aside the penalty upon M/s. D.R. John's Lab (P) Ltd. by holding that connivance against M/s. D.R. John's is not established. It was the case of the Learned Advocate that once connivance is not established then extended period cannot be invoked against the appellant and accordingly equivalent penalty cannot be imposed. It was also argued that appellant was much below the exemption limit under Notification No. 8/99-CE dated 28/2/1999, 8/2000-CE dated 1/3/2000, 8/2001-CE Dated 1/3/2001 and 8/2002-CE dated- 1/3/2002. That appellant was ignorant about the law that duty is required to be paid with respect to goods bearing the brand name of others. That the branded goods for which duty is demanded from the appellant also include the branded goods manufactured under appellant's own brand name. That even if the case is decided against the appellant then also the benefit of cum-duty and 25% reduced penalty under Section 11AC of the Central Excise Act, 1944 was required to be extended. That appellant could not agitate the above issues before the lower authorities as appellant was also pursuing its case before Settlement Commission. Learned Advocate relied upon the following case laws to argue that extended period cannot be invoked in their case:

(i) Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur [2013 (288) ELT 161(S.C.]

(ii) Apex Fluidomatics Ltd. Vs. Commissioner of Central Excise, Ahmedabad [2014 (313) ELT 106 (Tri.-Ahmd.)]

3. Shri M.K. Mall, A.C. (A.R.) appearing on behalf of the Revenue argued that the issues raised by the appellant now before CESTAT were not raised before the adjudicating authority. That it is specifically mentioned in the show cause notice that appellant did not take out registration when exemption notification clearly provide that impugned branded goods are not eligible to exemption. That appellant has also not filed annual declarations with the department giving details of the activities being done. It was thus strongly argued by the Learned A.R. that extended period is applicable in this case.

4. Heard both sides and perused the case records. Appellant has raised the issue of demand being time barred and also that some of the branded goods for which demand is raised belonged to the appellant. Alternatively, it is also argued by the appellant that even if on merit and time bar the case is decided against them, then also they are eligible to cum-duty benefit and 25% reduced penalty option under Section 11AC of the Central Excise Act, 1944. It is observed from the case records that these issues were never agitated before the lower authorities and no findings have been given by lower authorities on the issues raised before us now. It is also observed from para 3.1 of the Order-in-Original dated 17/1/2006 that appellant did not file any reply to the show cause notice and also did not attend personal hearing extended. In the interest of justice, we set aside the Order-in-Appeal dated 19/9/2006 passed by the first appellate authority and remand the case to Adjudicating authority. Appellant should raise all the issues before the adjudicating authority ~~with all the issues before the adjudicating authority~~ with all the details available with them, alongwith the relied upon case laws. Needless to say the adjudicating authority should extend the effective personal hearing to the appellant to explain their case. It is made clear that bench has not expressed any views on the merits of the case and all

the issues have been kept open for adjudicating authority to deliberate upon.

5. Appeal filed by the appellant is allowed by way of remanding the case to the Adjudicating authority.

(Operative part of the order already pronounce d in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
21.1.16
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