FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 17/11/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71424/2017-EX[DB] dated 25/09/2017

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/1459/2011	**IBA MOLECULAR IMAGING (INDIA) PVT LTD** D 131, Sector 63, Noida.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To
3 Advocate(s) / Consultant(s):

**Shardul Amarchand Mangaldas & Co
Amarchand Towers, 216 Okhla Industrial Estate, Phase-III,
New Delhi-110020**

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, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1459/2011-EX[DB]

(Arising out of Order-in-Appeal No. 53-CE/APPL/NOIDA/11 dated 28/02/2011passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s IBA Molecular Imaging (India) Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Central Excise, Noida — **Respondent**

Appearance:

Shri Atulya Kishore, Advocate — for Appellant
Shri Pawan Kumar Singh, Supdt (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 25/09/2017
Date of Decision : 25/09/2017

FINAL ORDER NO- 71424/2017........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 53-CE/APPL/NOIDA/11 dated 28/02/2011 passed by the Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the appellants were engaged in producing labeled 18F-FDG compound, which is glucose analog, having half-life period of 109.8

minutes. The said compound is basically a short lived positron emitting radioactive isotope suitable for Positron Emission Tomography for diagnosis, staging and monitoring treatment of heart, lung, brain and cancer etc. The said radioactive isotope is classifiable under Tariff Item No. 28444000 of first schedule to the Central Excise Tariff Act, 1985. The issue involved in the present appeal is whether the said isotope is having any self-life, so as to become eligible for charging Central Excise duty on the same. Revenue issued a show cause notice dated 26.03.2010 contending that the said isotope is chargeable to duty of Central Excise. The issue was contested by the appellant. The issue was decided through Order-in-Original dated 03.09.2010 wherein the original authority has held that the goods in question were chargeable to the duty of Central Excise. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) decided the appeal through the impugned Order-in-Appeal. The learned Commissioner (Appeals) relied on the ruling of Apex Court in the case of M/s Nicholas Pirmal India Ltd. Vs Commissioner of Central Excise, Mumbai reported at 2010 (260) E.L.T. 338 (S.C.) and quoted para-13 of the said ruling wherein it was held by the Hon'ble Apex Court that "Short shelf-life cannot be equated with no shelf-life and would not *ipso facto* mean that it cannot be marketed". The learned Commissioner (Appeals) have further found that Hon'ble Supreme Court in the said ruling had also observed that "a self-life of 8 to 10 hours was enough to market the product". In view of the said ruling learned Commissioner (Appeals) held that the issue regarding test of marketability and short self-life is settled by the Apex Court and therefore, there remains no ambuiguity on the said issue and in view of the same the appeal filed by the appellant was rejected. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3. Heard the learned Counsel for appellant who has submitted that the half-life period of the isotope is 109.8 minutes and that if the goods manufactured are not administered within 109.80 minutes then the goods remain of no use and therefore, they cannot be marketable anywhere else. He further argued that there is no open market available for the goods, therefore, the goods did not satisfy the test of marketability for the purpose of levy of Central Excise duty.

4. Heard the learned A.R. for Revenue who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find from the knowledge of Physics that it is known that the isotope does not have any self-life and the moment it comes into existence, its start decaying and reduces to half of its weight within the time which is called 'half-life period'. Therefore, we find that the goods manufactured by the appellant do not have any self-life. We therefore, hold that the goods manufactured by the appellant are not chargeable to duty of Central Excise.

6. Therefore, we set aside the impugned Order-in-Appeal and allow the appeal with consequential relief, as per law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

akp

प्रमाणित प्रति/Certified True Copy
05/12/17
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