

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2257 of 2010

[Arising out of Order-in-Original No. 06/CE/SRC/COMMR/J&K/2010 dated 08.03.2010 passed by the Commissioner of Central Excise, Jammu]

M/s Medley Pharmaceuticals Ltd.
Lane No.3, Phase-I, SIDCO, Industrial Complex,
Bari Brahmana, Jammu - 181133

.....Appellant

VERSUS

Commissioner of Central Excise, Jammu
OB-32, Rail Head Complex, Jammu-180012

.....Respondent

WITH

Excise Appeal No. 2902 of 2010

[Arising out of Order-in-Original No. 19-20/COMMISSIONER/CE/J&K/2010 dated 13.05.2010 passed by the Commissioner of Central Excise, Jammu]

M/s Medley Pharmaceuticals Ltd.
Lane No.3, Phase-I, SIDCO, Industrial Complex,
Bari Brahmana, Jammu - 181133

.....Appellant

VERSUS

Commissioner of Central Excise, Jammu
OB-32, Rail Head Complex, Jammu-180012

.....Respondent

APPEARANCE:

Present for the Appellant: Shri Purushottam Kumar Jha, Advocate

Present for the Respondent: Shri Shivam Syal, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60576-60577/2025

DATE OF HEARING: 27.03.2025
DATE OF DECISION: 27.05.2025

P. ANJANI KUMAR:

The appellants, M/s Medley Pharmaceuticals Ltd, assail the impugned order, dated 08.03.2010, passed by the Commissioner of Central Excise, Jammu. The appellants opted for the exemption contained under Notification No. 56/2002-CE dated 14.11.2002; on the issue of Notification No. 19/2008, the appellants claimed special rate of value addition, in terms of Para 2.1 of the notification, at 76.56% whereas the Respondent, Vide the impugned Order, fixed the Special rate of Value Addition at 72.16%. Hence, this appeal No. E/2257/2010.

2. During the pendency of the above proceedings, two show cause notices, dated 05.05.2009 & 03.07.2009, demanding the inadmissible self-credit of Rs.94,21,396/- and Rs.01,43,33,205/- respectively, for the period April 2008-May 2008 and June 2008-March 2009, allegedly availed by the appellants, were issued to the appellants. The issue involved in the show cause notice dated 05.05.2009 was that the appellants have not availed the total CENVAT credit available to them before paying through cash/ PLA; accordingly, not only payment of Rs. 94,21,396/- was incorrect but also availment of self-credit of the same was irregular. The issue involved in the show cause notice dated 03.07.2009 that the appellants have taken credit of entire duty paid through account current and not on the value addition of 56%. Both the show cause

notices have been decided by the Commissioner of Central Excise, Jammu vide Order dated 12.05.2010 confirming the total demand of Rs.32,31,759/- along with interest in respect of show cause notice dated 05.05.2009 and Rs.35,02,958/- along with interest in respect of show cause notice dated 03.07.2009. Learned Commissioner also imposed equal penalty of Rs.35,02,958/- in respect of show cause notice dated 03.07.2009 and a penalty of Rs.5000/- under Rule 27.

3. Shri Purushottam Kumar Jha, Learned Counsel for the appellants, submits the appellant is engaged in the manufacture of Medicines and were availing benefit of area-based exemption under Notification No. 56/2002-CE dated 14/11/2002 by way of self-credit of duty paid through PLA; as per S No. 2 of the Table in Para 2 of the said Notification, they were entitled to refund on value addition @ 56% of total duty paid or actual duty paid through PLA, which ever was less; the appellant filed application for fixation of special rate of value addition of 78.51%, as per provision of para 2.1 of the Notification for the period 2008-09; consequent to the queries raised by the Commissioner, the appellant revised the special rate to 76.56%; Commissioner vide impugned OIO fixed special rate as 72.16% for 2008-09.

4. Learned Counsel submits that as per 2.1 (Explanation) to Notification No. 19/2008, actual value addition in respect of the goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account Sale value of the goods, excluding excise duty, Value Added Tax and other indirect taxes, if

any, paid on the goods and making the adjustments like **Less:** Cost of raw material and packing material consumed in the said goods; Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004; Value of said goods available as inventory in the unit but not cleared at the end of the financial year preceding that under consideration and **Plus:** Value of said goods available as inventory in the unit but not cleared at the end of the financial year preceding that under consideration.

5. Learned Counsel submits that while calculating the sales value, the Respondent has not added the samples in the sales value and has disallowed it; the appellant is paying excise duty on physician samples, which consume the considerable amount of Raw/packing material; the material consumption shown in the P&L a/c is inclusive of Raw /Packing material used in samples; as the Respondent has considered total consumption, opening & Closing Stock of Sample for arriving value addition, the sales value of sample Rs. 431.16 lacs (Pro-rata) under Rule 4 should be considered in the total sale value; if the Respondent is not considering the sale value of the samples, then the respondent has to reduce the proportionate consumption of Raw/Packing material from total consumption, which would give the fair justice to value addition.

6. Learned Counsel submits also that the respondent has deducted Octroi, Transportation & Collie, Carriage Inward; Notification does not envisage such deduction, as these are expenses and charged off to revenue and not specifically mentioned in the notification as

qualifying for deduction. He submits that the respondent has included the work in process in calculating the rate fixation; notification speaks about the goods available as inventory in the unit but not cleared at the start /end of the Financial Year; it is very clear that in order to be inventory for the addition/ deduction from the sale value, the goods must be physically available in the unit & the same should not have been duty paid; this can be deduced from the fact that the notification uses the word 'Not Cleared'. He submits that in view of the above, the appeal may be allowed.

6.1. In respect of Appeal No. E/2902/2010, learned Counsel for the appellants submits that there are two issues involved in the two show cause notices issued. The demand of duty of Rs. 32,31,759/- was on the count that the appellants have not exhausted the available credit before making payment through the account current; he submits that this issue is already decided by this Bench in favour of the appellants vide Final Order No. 60353-60355/2025 dated 04.03.2025. Learned Counsel further submits that demand confirmed of Rs.35,02,958/- on account of availment of excess credit is linked to the Appeal No. E/2257/2010 and in fact, the appellants have pleaded before the Commissioner that the issuance of show cause notice was premature as the application for fixing special rate was pending.

7. Shri Shivam Syal, Learned Authorized Representative for the Revenue, takes us through the Notification and provisos to Para 2.1(1) to the Notification No.56/2002-CE dated 14.11.2002, as

amended from time to time and submits the manner in which the Adjudicating Authority dealt with various items of calculation vis-à-vis the claim of the appellants. The same are tabulated as below.

Commissioner	Appellant
Adopted value as per sales shown in Profit & Loss Account excluding Excise Duty, VAT and other Indirect Taxes as per Para 2A	Value must be taken as per Section 4A, on which they are assessed less abatement
Excluded the pro-rata value of Samples distributed free of cost from the 'sale value' in absence of any evidence on record of its sale and realization of the said amount as sales value	pro-rata value of Rs. 489.16 Lacs in respect of Samples distributed free of cost, should be considered
Deducted Excise duty and Cess from the sales shown in P&L account	Excise duty and Cess must be included to the sales shown in P&L account
The expenditure directly attributable to the acquisition of raw material, like 'Octroi, 'Transport & Coolie charges' was included.	They need to be excluded, as per explanation to Para 2A, which reads as "(ii) Less Cost of raw materials and packing material consumed in the said goods
Commissioner has included the value of WIP while arriving at 'Value of said goods available as inventory includible	Work in process (WIP) not includible while calculating value of inventory of finished goods as required under above formula in Explanation to Para 2A

8. Learned Authorized Representative submits that as per Provisions of the Notification, actual value addition in respect of the said goods shall be calculated on the basis of the Financial Records of the preceding financial year and that the manufacturer supports his claim for Special Rate with a certificate from his Statutory Auditor, based

on the Audited Balance Sheet and Financial Records of the unit, for the preceding financial year. whether the appellant is paying duty under MRP based assessment is of no consequence in the present case. He submits that the appellant has not included value of work in process (WIP) while Commissioner has given reasoned and rational findings and has concluded that the value of WIP was to be included while arriving at 'Value of said goods available as inventory', as per Accounting Standards prescribed by the Ministry of Company affairs; from the provisions of Notification No. 56/2002-CE dated 14.11.2002 as amended read with the provisions of Sub-Sections 3A and 3C of Section 211 of Companies Act, 1956, Balance Sheet and Profit & Loss Account has to be considered and as such Accounting Standards prescribed by the Ministry of Company Affairs are squarely applicable to calculate the actual value addition.

9. Learned Authorized Representative submits on the reliance of the appellants the judgement of Hon'ble High Court of Jammu & Kashmir in case of Reckitt Benckiser Vs Union of India and Final order bearing No. A/61350-61411/2018-EX(DB) dated 21/03/2018 in case of Ind-Swift Laboratories Ltd Vs CCE, Jammu, that the Hon'ble High Court held only, that the Government cannot withdraw or restrict the benefit given to them under area based exemption notification and relied upon concept of "Promissory Estoppel"; however, department filed LPAOW No. 20/2011 and other LPAs against the said order dated 23/12/2010 of the Hon'ble High Court of Jammu & Kashmir, which vide Order dated 19.09.2018 disposed of the appeal filed by

the Department in LPAOW No. 20/2011, along with the Connected IA with the observation that the result of the instant appeal shall also be governed by the decision in SLP (C) No. 028194-028201/2010 and SLP (C) CC No. 012392-012399/2010 against the order passed by the Division Bench of Gujarat High Court involving similar issue; Hon'ble Apex Court in Civil Appeal No. 2256-2263 of 2020 arising out of SLP (C) No. 028194-028201/2010 in case of UOI V/s VVF Limited and others delivered judgement on 22/04/2020 in favour of Revenue [(2020(372) ELT495(SC)) holding that Public Interest has precedence over doctrine of "Promissory Estoppel"; it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. Learned Authorized Representative submits that they were entitled to refund of entire duty paid in cash by relying upon judgement of Hon'ble High Court of Jammu & Kashmir in case of Reckitt Benckiser Vs Union of India is not tenable; special rate fixed by the Commissioner for value addition @ 72.16% is justified. He relies on the following.

- Dilipkumar & Company 2018(361) ELT 577(SC)
- Reckitt Benckiser 2011(VVVVF269) ELT 194 (J&K) & order dated 19.09.2018 in LPAOW No. 20/2011
- VVF Civil Appeal No. 2256-2263 of 2020 arising out of SLP (C) No. 028194-028201/2010 2020 (372) ELT 495(SC)

10. Heard both sides and perused the records of the case. Brief issue involved in the case is as to whether the Commissioner was correct in fixing the special rate of Value addition at 72.16%, vide impugned

Order dated 13.02.2008, as against the claim of 76.56% by the Appellant? We find that the fixation of value addition is in terms of the Notification No.56/2002-CE dated 14.11.2002, as amended Notification No. 19/2008-CE NT dated 27-3-2008. We find that the relevant Para 2.1 of Notification No. 19/2008-CE NT dated 27-3-2008 is as under

2.1 (1) Notwithstanding anything contained in paragraph 2, the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the manufacturer finds that four-fifths of the ratio of actual value addition in the production or manufacture of the said goods to the value of the said goods, is more than the rate specified in the said Table expressed as a percentage. For the said purpose, the manufacturer may, within sixty days from the beginning of a financial year, make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, for determination of such special rate, stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods. Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days: Provided further that the manufacturer supports his claim for a special rate with a certificate from his statutory auditor containing an estimate of value addition in the case of goods for which a claim is made, based on the audited balance sheet of the unit, for the preceding financial year,

(2) On receipt of the application referred to in sub-paragraph (1), the Commissioner of Central

Excise or Commissioner of Customs and Central Excise, as the case may be, after making or causing to be made such inquiry as he deems fit, shall fix the special rate within a period of six months of such application;

(3) Where the manufacturer desires that he may be granted refund provisionally till the time the special rate is fixed, he may, while making the application, apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing for grant of provisional refund at the rate specified in column (4) of the said Table for the goods of description specified in column (3) of the said Table and falling in Chapter of the First Schedule of the Central Excise Tariff Act, 1985 (5 of 1986) as in corresponding entry in column (2) of the said Table, and on finalization of the special rate, necessary adjustments be made in the subsequent refunds admissible to the manufacturer in the month following the fixation of such special rate.

(4) Where the Central Government considers it necessary so to do, it may –

(a) revoke the special rate or amount of refund as determined under sub-paragraph (2) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, or
(b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate so fixed.

Explanation For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following.

(i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;

(ii) Less Cost of raw materials and packing material consumed in the said goods;

(iii) Less Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;

(iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year,

(v) Less Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration.

Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods.

11. We find that dispute between the appellant and Revenue appears to be on the following issues.

(i). While Considering the Value of Sales, whether the value shown in financial records be taken or the value under Section 4A less abatement be taken.

(ii). Whether Excise duty and Cess should be excluded or included in the sales figure as above

(iii). While arriving at the value of Clearances, the value of samples distributed free of cost should be excluded as they are not sold or a notional value on pro rata basis be considered?

(iv). While arriving at the cost of the raw material, whether 'Octroi, 'Transport & Coolie charges' must be included or excluded?

(v). While taking the value of inventory, whether the value of Work in progress be considered for inclusion or not?

Now we shall proceed to answer the above after analyzing the rival contentions and the legal provisions in this regard.

12. Coming to the first question as to whether the value shown in financial records or the value under Section 4A less abatement be taken for arriving at the value of sales, we find that the as per the explanation below para 4 of the notification prescribes that the actual value addition in respect of said goods shall be calculated on the basis

of the financial records of the preceding financial year. we find that the adjudicating authority observes that the explanation to Para 2.1 provides that for the purpose of this Paragraph, the actual value addition in respect of the said goods shall be calculated on the basis of the Financial Records of the preceding financial year; thus as per the provisions, the calculation for fixation of Special Rate under Notification No. 56/2002-CE dated 14.11.2002, as amended, is to be done as per the figures of the Audited Balance Sheet/Financial Records of the unit. In view of the explicit provision in the Notification, we find that the commissioner was correct in taking the value as per financial records and the appellant's contention in this regard are not acceptable.

13. So far as to whether Excise duty and Cess should be excluded or included in the sales figure as above, we find that the notification provides unequivocally that Excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods shall be excluded. Therefore, we find that the contention of the appellant is not legally acceptable. We find that the adjudicating authority was correct in excluding them.

14. Coming to the third issue relating to the exclusion or inclusion of sales value of Samples, given free of cost by the appellant, on a pro-rata basis, we find that the appellants submitted that the value of the free samples was Rs.489.16, during the year 2007-08, as reflected in profit & Loss account. We find that the notification uses the word 'sales', which in common man parlance, means trading for a

consideration, though there may be a profit or otherwise. Free distribution of samples cannot be held to be sales. In fact, samples bear an indication to the effect that they are 'not for sale'. This is not to deny the fact that they constitute certain 'cost' to the manufacturer. The notification wishes to benefit the manufacturers who achieve a value addition and the value addition is invariably achieved by sales and not by free distribution. When the notification speaks of sales, it means sale only but not free distribution. When it says 'value', it is the value but not 'notional value or proportionate value or 'pro rata value. Commissioner also finds that the appellant has not brought on record any document evidencing the actual sale of samples and thus fetching any sales realisation. Therefore, we find that as held by the adjudicating authority, inclusion of 'notional value' or 'pro rata value', is beyond the scope of the Notification No.56/2002-CE dated 1411.2002, as amended, for the purpose of calculation of value addition.

15. Regarding the fourth issue as to whether 'Octroi, 'Transport & Coolie charges' must be included or excluded, for arriving at the cost of the raw material, we find that the appellants argue that the same should be excluded. We find that the explanation under notification provides that sales value needs to be arrived Less Cost of raw materials and packing material consumed in the said goods. We find that 'cost' would mean the cost in the hands of the appellant. He has borne all the expenses like, octroi, coulee charges, freight inwards etc in procuring the raw material all of which add to the cost of such

procurement. Therefore, there is no point in arguing that the same be excluded from the cost of raw material. In the general understanding also, value addition is grossly the difference between gross turnover and all expenses. Therefore, we find there is no logic in the argument of the appellant.

16. We find that the Commissioner has dealt with this issue elaborately referring to accounting standards, as prescribed by the Ministry of Company Affairs, sub-Section 3A and 3C of Section 211 of the Companies Act, 1956 which every company has to comply in preparing Profit and Loss Account and Balance Sheet etc. He finds that

20. From the provisions of Notification No. 56/2002-CE dated 14.11.2002 as amended read with the provisions of Sub-Sections 3A and 3C of Section 211 of Companies Act, 1956 as discussed in Para 11 and Para 12 above, it is quite clear that for the purposes of calculation of value addition in terms of Notification supra, figures of the Audited Financial Records namely, Balance Sheet and Profit & Loss Account has to be considered and as such Accounting Standards prescribed by the Ministry of Company Affairs are squarely applicable to calculate the actual value addition.

21. Now I deal with the provisions of the Accounting Standards-2 related to the cost of purchase and Inventory:

as per Para 7 of the Accounting Standard-2, Cost of Purchase has been defined as-

"The cost of purchase consists of the purchase price including duties and taxes (other than those subsequently recoverable by the enterprise from the taxing authorities), freight inwards, and other expenditure directly attributable to the acquisition. Trade discounts, rebates, duty drawbacks and other similar items are deducted in determining the costs of purchase,"

From the above, I find that purchase should include all expenses directly attributable to the acquisition. I

find that the Party in their letter dated 29.12.2009 clarified the nature of expenses under the heads Transport & Coolie, Octroi and Carriage inwards. As per the clarification given by the Party, the following expenses merit to be accounted for and added to the cost of raw material consumed.

17. Coming to the last issue as to whether the value of the inventory should include work in progress, we find that the adjudicating authority finds as follows.

Inventory:

The terms Inventory has been defined in Para-3 of the Accounting Standrad-2 win ich reads as follows:

"3. The following terms are used in this Statement with the meanings specified:

Inventories are assets:

(a) held for sale in the ordinary course of business;

(b) in the process of production for such sale; or

(c) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale."

From the clause 2 of Para-3 of the AS-2 above, it is very clear that besides finished goods and raw materials, Material in the process of production of finished goods i.e. Work-in-Process is included in the costing inventories. As the inventory of raw materials has been considered by the Party in the consumption of Raw & Packing Materials, the remaining inventories related to Finished Goods and Work-in-Process have to be considered for calculating the actual value addition. Thus, I hold that Work-in-Process is clearly includible in the value of goods available as inventory in the unit but not cleared at the end of a Financial Year.

18. We find in view of the above, that the learned commissioner was right in including the work in progress in the inventory. We further find that the adjudicating authority has discussed each of the

elements that go in to the calculation of the value addition and has given logical reasoned findings referring to accounting standards. We find that the appellants, other than making bland averments, have not given any convincing reasons to buttress their argument. In view of the above, we find that there is no reason as to why we need to interfere with the impugned order.

19. Coming to Appeal No. E/2902/2010, there are two issues involved in the two show cause notices issued; the demand of duty of Rs. 32,31,759/- was on the count that the appellants have not exhausted the available credit before making payment through the account current; Revenue was of the opinion that the appellants should have availed CENVAT credit on the capital goods they have procured from domestic manufacturers; the appellants submit that in terms of Para 8.3 (c) of Foreign Trade Policy, the supplier of such capital goods will be eligible for refund of Terminal Excise Duty under the condition that the purchasers, in this case the appellants, do not avail CENVAT credit and that for this purpose they have not availed CENVAT credit; therefore, the appellants cannot be forced to utilize such CENVAT credit. We find that the issue is no longer res integra. This Bench vide Final Order No. 60353-60355/2025 dated 04.03.2025 in respect of the appellants themselves decided the issue in favour of the appellants.

20. We further find that the second issue involved in the appeal is that the appellants have alleged to have taken self-credit of the duty paid in excess of 56%; on this count, a demand of Rs.35,02,958/- was confirmed; we find that the issue is the same as

was discussed above in Appeal No. E/2257/2010; we find that there is merit in the claim of the appellants that the issue of fixation of special rate being pending, Revenue ought not to have issued the show cause notice dated 03.07.2009. The issue now being decided as above, demand of Rs.35,02,958/- requires to be adjusted in terms of the special rate decided by the Commissioner.

21. In view of the above:

(i) In respect of Appeal No. E/2257/2010, the impugned order is sustained and fixation of special rate @ 72.16% is upheld; accordingly, the appeal is rejected.

(ii) In respect of Appeal No. E/2902/2010, the same is partially allowed in the following terms:

- (a) Demand of Rs.32,31,759/- on account of non-utilization of CENVAT credit on capital goods is set aside.
- (b) Demand of Rs.35,02,958/- is ordered to be re-calculated in view of the special rate fixed by the Commissioner as above.
- (c) Penalties are, however, set aside.

(Order pronounced in the open court on 27/05/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)