

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148 SECTOR 17-C CHANDIGARH**

Date of Hearing/Order: 6.12.2018

Appeal No. E/53480/2015-DB

(Arising out of Order-in-Original No. JNK/CEX/000/010/2015 dated 8.7.2015 passed by Commissioner, Central Excise & Customs, Jammu)

M/s Sun Pharma Laboratories Ltd. Appellant

Vs.

CCE & ST, Jammu & Kashmir Respondent

Appearance :

Shri Kiran Salwe, Advocate - for the appellant

Shri A.K. Saini, DR - for the respondent

**CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)**

Final Order No. 63643/2018

Per Bijay Kumar :

The present order arises out of the order No. JNK/CEX/000/010/2015 dated 8.7.2015 passed by the ld. Commissioner, Central Excise J&K against the appellant. Ld. Commissioner has confirmed the demand as per the show cause notice and hence the present appeal.

2. The facts of the case are that the appellant are registered with the Central Excise department for the manufacture of PP medicines falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 (5 to 1986) and also availing the benefit under Notification No. 56/2002-CE dated 14.11.2002 as amended. Prior to

the amendment of the above notification, the appellant was entitled to take the refund as per the notification over and above the payment made through the Cenvat account. Subsequently, the above notification was amended vide Notification No. 19/2008 dated 27.3.2008 and 34/2008-CE dated 10.6.2008, wherein restriction regarding taking of refund or otherwise than by utilisation of Cenvat credit by a manufacturer availing exemption under the Notification No. 56/2002 the rate of value addition was specified as 56% and 26% in respect of the goods of Chapter 30 and 39 respectively being manufactured by the appellant.

3. During the scrutiny of ER-1 returns and refund claims filed by the appellant for the period October, 2012 to November, 2012, it was noticed by the Revenue that the appellant has taken 100% credit of Central Excise duty paid by them through PLA account instead of having the value rate of 56% and 26% by two notifications as mentioned above.

4. Revenue contested the taking of the 100% credit without following the two amendment notification was incorrect and therefore issued a show Cause Notice.

5. We have heard the parties and perused the case record.

6. We find that this issue is covered in favour of the appellant by the decision of Hon'ble High Court of J&K in case of **Reckitt Benckiser Vs. Union of India** - 2011 (269) ELT 194 (J&K) and

subsequent order of this Tribunal being Final Order No. A/62073-62076 & 62207/2018-EX(DB) dated 22.3.2018.

7. Following the above judgement of Hon'ble High Court of J&K and the Final Order of this Tribunal, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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