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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **07/10/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53704-53711/2014-CU[DB]** dated **23/09/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/71-73/2012	**C.C. (ICD) NEW DELHI** ICD, TUGHLAKABAD, NEW DELHI 110020.
	C/247,253,2726/2012/2012	**New Delhi(icd Itc)**
	C/56672,56992/2013/2013	**New Delhi(icd Tkd)**
		Name and Address of Respondent
2		**DR. ROSHAN LAL. AGARWAL & SONS PVT. LTD.** NO. 16, NETAJI SUBHAS MARG, DARYA GANJ, NEW DELHI.

Other Appellants and Respondents as per Annexure

Copy To

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13 C.D.R.   14 Office Copy   15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
COURT - II

Appeal Nos. C/71-73, 247, 253 & 2726/2012-CU[DB]
[Arising out of Order-in-Appeal Nos.CC(A)Cus/ICD/422, 420, 468-480, 126-131, 52-64 & 173-180/2012, dated 08.11.2011, 04.11.2012, 14.12.2011, 30.04.2012, 19.03.2012 and 20.06.2012 respectively passed by C.C.(Appeals), New Delhi]

And

Appeal Nos. C/56672 & 56992/2013-CU[DB]
[Arising out of Order-in-Appeal Nos.CC(A)Cus/ICD/456-464 & 531-536/2012, dated 15.10.2012 and 12.11.2012respectively passed by C.C.(Appeals), New Delhi]

C.C., ICD, New Delhi : ...Appellants

Vs.

Dr. Roshan Lal Agarwal & Sons Pvt. Ltd. : ... Respondents

Present for the Appellants : **Shri Govind Dixt, DR**
Shri VP Batra, DR

Present for the Respondents : **C. Manickam, Advocate**

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Reserved on : 21.04.2014

Date of Decision: 23.09.2014.

FINAL ORDER NOs. 53704-53711, **DATED** 23/09/2014

PER: D.N.PANDA

Revenue being aggrieved by the orders passed on 08.11.2011, 04.11.2011, 14.12.2011, 30.04.2012, 19.03.2012, 19.03.2012, 20.06.2012, 15.10.2012 and 12.11.2012 by ld. Commissioner (Appeals) setting aside the adjudication, which had imposed 5% Additional Custom Duty (ACD), has come in appeals before the Tribunal.

2.1 Ld. Commissioner (Appeals) analysing section 3of Customs Tariff Act, 1975 (hereinafter referred to as "the 1975 Act")read with section 5A of Central Excise Act, 1944 (hereinafter referred to as "the 1994 Act") was of the opinion that not extending the benefit of Notification No.30/2004 and No.1/2011 shall be violation of Article 14 of Constitution of India. He held that homeopathy medicines manufactured in India and sold in the domestic market, attracts 1% CVD whereas, the imported homeopathy medicines attracts 5% of duty at the time of import thereof. Point of taxation under Section 5A of the Central Excise Act, 1944, is the removal of goods from factory which is similar to import of goods filing Bill of Entry for home consumption. Both are identical situations and there is no material difference between the two in sum and substance as well as nomenclature. Not granting uniform treatment in a like situation vitiates the right to equality principle guaranteed under Article 14 of the Constitution. Support was drawn by him from the case of **K.T. Moopil Nair Vs. State of Kerala [AIR 1961 (SC) 552]**, wherein the Constitutional Bench of Hon'ble Supreme Court had examined the legality of the levy of land tax and its constitutionality.

2.2 Ld. Commissioner further held that the principles evolved in the above referred judgement have been consistently followed in various judicial decisions and the core issue in the present case is as to whether there is any discrimination of duty which sought to be charged on the imported homeopathy medicines vis-a-vis indigenously manufactured homeopathy medicines and sold in India and if there is any discrimination, whether such discrimination has satisfied the test of reasonability and has any object to be achieved and serve larger public interest under the Constitution of India. He further recorded in his order that admittedly, as per the Department, there is discrimination in charging the different rates of duty between the imported homeopathy medicines and indigenously manufactured medicines. There is no object likely to be achieved by discrimination. On the contrary, levy of additional duty will be against the spirit of providing affordable medicine to the common man of this country. As interpreted and held by the Hon'ble Supreme Court, right to life guaranteed Article 21 of the Constitution includes right to health and right to health includes right to affordable medicines also. Levy of discriminatory duty definitely denies the right to get medicine at an affordable price and that is detrimental to public or common interest.

3.1 Revenue's preliminary objection is that ld. commissioner (Appeals) is not a writ court but being a statutory authority should have acted within the frame work of law without deciding the appeal as if that was a writ petition before him. Deciding the appeal by him as unconstitutional under section 3 of Customs Tariff Act, 1975 is not the power of ld.

commissioner (Appeals). He allowed major exemption to the respondent from ACD directing to pay 1% against imported goods while levy @ 5% was legitimate to provide level playing field to the domestic players against the imports. Decision of ld. commissioner (Appeals) is contrary to law. A statutory authority being a creature of the statute should not usurp powers of a constitutional authority and convert the appeal before him into a Writ. He has also no power to criticise the vires of the statute.

3.2 According to Revenue, the goods imported by respondent was granted exemption in terms of **Notification No.1/11/-CE dated 01.03.2011** by ld. commissioner (Appeals) while ld. adjudicating authority directed the levy of ACD @ 5% in terms of that Notification. Ld. Adjudicating Authority rightly opined that the goods imported has availed equal treatment of credit in foreign country for which no concession in duty ought to have been allowed under the Notification. Ld. commissioner (Appeals) interpreted section 3 of Customs Tariff Act, 1975 in a manner to grant undue advantage to the respondent disturbing the level playing to the domestic players. His interpretation resulted in granting exemption of duty to the extent of 4% towards Additional Customs Duty (ACD) imbalancing the level playing field and domestic manufacturers were adversely placed, which is contrary to law. Ld. commissioner (Appeals) in essence frustrated the spirit of the levy on imports.

4. Revenue's emphasis was that the decision of Apex Court in the case of ***Eagle Flask Industries Ltd. [2004 (171) ELT 296 (SC)]*** holds the field being a latest one subsequent to the decision in the case of ***Hyderabad Industries Ltd. [1999 (108) ELT 321 (SC)]***. Repeatedly all the courts in this country beginning from ***Motiram Tolaram [1999 (112) ELT 749 (SC)]*** judgement have held that the assessee who claims benefit of a Notification has to satisfy the condition of that Notification strictly. To avail the concession, Respondent failed to discharge burden of proof and failing to show that the imported goods were manufactured from inputs on which no credit of duty paid on raw material was availed, it fails to get concession of 4% ACD. Levy should have been 5% on the imported goods.

5. Revenue further submitted that section 3 of Customs Tariff Act, 1975 specifically mandates that quantum of ACD shall be to the extent of excise duty imposed on **like articles if processed and manufactured in India**. Input credit being allowed as set off in India, similar benefit is also allowed abroad. Allowance of such treatment in the exporting country cannot be ignored. Therefore, duty of the respondent is to satisfy that no credit was enjoyed abroad in order to claim rate of ACD to be @ 1% instead of 5% against the imports made. To support its contention, Revenue relied on the decision of

Tribunal in the case of ***Howrah Ispat Pvt. Ltd. [2008 (227) ELT 136 (Tri.-Kol)]*** proposing that levy of 5% ACD would be justified. According to Revenue, if the Notification in question is interpreted in the manner ld. commissioner (Appeals) has done that shall be a threat to indigenous industries and shall defeat purpose of law as well as grant undesirable benefit to respondent severely competing with the like goods manufactured in India. Revenue's further emphasis was that if paras 3, 7 and 8 of the said judgement is considered along with five judges judgement in the case of *Hyderabad Industries* (supra), adjudication orders need to be restored setting aside the appellate order.

6.1 Rebutting the contentions of Revenue, ld. counsel for Respondent submitted that in the case of ***Mapsa Tapes Pvt. Ltd. [2009 (247) ELT 188 (Tri.)]*** it has been held that goods imported are entitled to exemption from ACD what an indigenously manufactured goods enjoys. His emphasis was that where it is not possible to determine as to whether the imported goods has enjoyed CENVAT credit, respondent cannot be denied the exemption in terms of Notification No.1/11-CE dated 01.03.2011. It was also argued that Section 3 of the Customs Tariff Act, 1975 is analogous to Section 4 of the Central Excise Act, 1944. Hence levy and exemption as notified under Section 5A of the Central Excise Act, 1944 are equally applicable to the goods imported and covered by Section 3 of the Customs Tariff Act, 1975.

6.2 Respondent contended that the basic condition of the Notification to be satisfied is that the importer should not avail any CENVAT or Input credit. When the importer is neither registered with the Service Tax Department nor with the Central Excise Department, the question of availing of the credit under the CENVAT Credit Rules, 2004 does not arise and for this "Obvious Reason", the exemption benefit has to be extended.

6.3 It was further contention of the Respondent that as per the settled position of law that parity has to be maintained between the imported goods and indigenously manufactured goods for the purpose of charging of duty on the imported goods and granting exemption. Section 3 of the Customs Tariff Act, 1975 and Section 4 of the Central Excise Act, 1994 are analogous to each other. Any discrimination between the imported goods and domestically manufactured goods while charging additional duty and granting exemption without any object would be treated as unreasonable classification and action of the State shall be arbitrary in the context of Article 14 of the Constitution of India, 1950.

6.4 The Respondent further argues that the decision of the ld. Original Authority was based on the ratio of the judicial decision in the case of ***M/s. Priyesh Chemicals and Metals Vs. CCE, Bangalore [120 ELT 259 (Tri.-LB)]*** and the said decision has been clarified by subsequent decisions of Tribunal. Therefore, the ratio of that case has no relevance and application following of doctrine of precedent. Further, the Respondent contended that the clarification dated 25.,03.2011 issued by the Board has restricted the scope of exemption benefit which amounts to colourable exercise of quasi-legislative power. Such clarification of the Board not being law, it lacks sanctity and enforceability. Therefore, that is not applicable.

6.5 Explaining the history of the levy of customs, the Respondent submitted that prior to enactment of Customs Tariff Act, 1975, the Indian Tariff Act, 1934 was in force. After independence, Govt. Of India followed the provisions of Sea Customs Act, 1978 along with Indian Tariff Act, 1934. Section 2A of the Indian Tariff Act, 1934 is akin to Section 3 of Customs Tariff Act, 1975. That section deals with countervailing duty and levy of such duty has a long history which is evident from the judgement of apex court in the case of ***M/s. Kalyani Stores Vs. State of Orissa [1996 (1) SCR 865]***. Countervailing duty is intended to be levied only in the context of inter-state trade in India and not in the context of international trade. This is supported by Section 12 of Customs Act, 1962. Therefore, Union of India cannot collect the levy through a Notification since countervailing duty and Additional Customs Duty are different, which is appreciable from the decision of Hon'ble High Court of Gujarat in the case of ***M/s. Navjivan Mills Co. Ltd. & Others Vs. Union of India & Other [1982 (10) ELT 155 (Guj.)]***. He relied on paras 12 and 14 of the said judgement to highlight that countervailing duty and Additional Customs Duty not being one and the same, the additional duty should be equivalent of central excise duty without any disparity to the import compared to domestically manufactured goods.

6.6 Further contention of the Respondent was that the Notification No.1/2011, dated 01.03.2011 (C.Ex.) was issued under Central Excise Act, 1944, while Section 3 of Customs Tariff Act, 1975 provides for levy and exemption of additional duty of customs and that should be in par with the other levy so as to bring the imported goods and indigenously manufactured goods in par. Ld. Commissioner (Appeals) elaborately dealt with nature of additional duty and implication of exemption benefit in the context of the Board circular. That has sound reason as well as logic for which Revenue's appeal should be dismissed.

6.7 Respondent contended that the issue of grant of exemption of customs duty to the extent of 4% on the imported goods from levy of ACD is nothing new. Such benefit was all along available to the importers by judgments of different courts as well as Tribunal. Respondent's prayer was therefore not to interfere with the order of ld. commissioner (Appeals) but to uphold the same.

7. Heard both sides and perused record.

8.1 The short point for decision in this batch of appeals preferred by Revenue is whether homeopathic medicine imported by the Respondent is liable to Additional Customs Duty (ACD) @ 5% or 1% and 2% as the case may be of the value of import in terms of Notification No.1/2011/-CE dated 01.03.2011 during the material period.

8.2 The respondent imported homeopathic medicines through different Bills of Entry during different period from 12.01.2011 to 25.09.2012 against which it was directed to pay ACD @ 5% in terms of the Notification No.2/2011-CE, dated 1.3.2011 read with Notification No.1/2011-CE, dated 1.3.2011 by virtue of the provision contained in Section 3(1) of the 1975 Act. For the convenience of reading, the Notification No.1/2011-CE, dated 1.3.2011 in so far as that is relevant for the disposal of this batch of appeals is reproduced as below:-

"Effective rate of duty of 1% on specified goods when no Cenvat credit availed on inputs or input services

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling under Chapter, heading, sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table, from so much of the duty of excise leviable thereon under the said Central Excise Act, as is in excess of the amount calculated at the rate of 1% ad valorem :

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or tax on input services has been taken under the provisions of the CENVAT Credit Rules, 2004.

TABLE

S. No.	***Chapter or heading or sub-heading or tariff item of the First Schedule***	***Description of the excisable goods***
(1)	*(2)*	*(3)*
37	*30*	*Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia*

[Notification No.01/2011-C.E., dated 1-3-2011]:

8.3 During the period of import, the homeopathic medicine manufactured in India was liable to exercise duty @ 5% under Chapter 30 of Central Excise Tariff Act, 1985. However, that levy was restricted to 1% where input tax credit is not taken. This was by virtue of above said Notification. Section 3(1) of the Customs Tariff Act, 1975 prescribes that in addition to levy of basic customs duty, ACD equal to central excise duty **on the like goods if manufactured** in India is leviable on the imported goods so as to equate both the goods and make competitive in domestic market providing a level playing field to both, i.e., indigenously manufactured goods and imported goods. Section 3(1) of Customs Tariff Act, 1975 in so far as that is relevant to the present controversy reads as under:-

> ***"SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. —*** *(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty)* ***equal to the excise duty*** *for the time being leviable* ***on a like article if produced or manufactured in India*** *and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :*
>
> ***Provided*** *that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time*

being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. *— In this sub-section, the expression "the excise duty for the time being leviable on a* ***like article if produced or manufactured in India****" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty."*

8.4 Reasoning of the provision enacted in section 3(1) of the 1975 Act shows that a parity mechanism is prescribed to levy ACD on imported homeopathy medicine, which is equal to the amount of excise duty for the time being leviable on a **like article if produced or manufactured in India.** That is levied under the premises that an article imported into India can be produced or manufactured in India and exigible to the levy of excise duty in terms of Section 3(1) of 1975 Act. Such levy is made even if the goods imported into India are not capable of being manufactured in India or are not in fact manufactured in India. The expression "**excise duty for the time being leviable on a like article if produced or manufactured in India**", which occurs in Section 3(1) of the Tariff Act, 1975 means excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs.

8.5 According to the agreement between member countries of WTO, the members are required to extend input duty remission on the final goods and there shall be no levy of local taxes and duties on the goods meant for export from the exporting countries. Not only CENVAT credit is granted or rebate of excise duty is allowed on finished goods meant for export, but duty draw back, if any, is also allowed on the goods exported. Such practice is followed by member countries as mandate. Therefore, the goods entering into India from outside India do not come with local tax, levies or duty component therein, whereas like goods indigenously manufactured suffer from excise duty in India @ 5% *ad velorem* availing input tax credit.

8.6 To the stage of availing input tax credit on manufacture, both foreign goods and Indian goods are in par. But situation differs when the goods are meant for export duty free from exporting countries. The goods manufactured in India suffer excise duty when cleared for domestic consumption. Burden of excise duty @ 5% is borne by such goods. Therefore, to bring both the goods to par, imported goods are prescribed by section 3(1) of 1975 Act to suffer burden of ACD in addition to basic customs duty. This trade remedy measure prescribed by law is to bring equilibrium to both the goods so as to ensure fair trade and make them competitive. Without ACD, the foreign goods would be cheaper by 4% or 3% as the case may be (5% - 1% or 2%) and indigenously manufactured goods bearing duty burden of 5% shall go out of market. Levy of ACD in addition to basic customs duty is a mechanism to provide level playing field under WTO regime. This is provided to protect indigenously manufactured goods to be free from threat of foreign competition. Such a level playing being intention of section 3(1) of 1975 Act, there cannot be a plea that the homeopathy goods have entered into India without input tax concession and not liable to ACD @ 5% but shall be liable to concessional duty of 1% or 2% as the case may be during material period.

8.7 Germany being a member of WTO, it has obligation to provide input tax credit to its manufacturers against liability on finished goods and no output duty is payable by them against the goods meant for export. It may also be stated that law of member countries provide refund of input tax if that is not possible to be set off against any duty liability. Accordingly, the medicines imported by Respondent from Germany being without levy of duty thereon, is liable to ACD equal to excise duty levied in India on like goods which is @ 5% at the material time.

8.8 It is settled position that goods are only exported by exporting countries but not taxes thereon. Accordingly, the homeopathic medicine imported from Germany without input tax component therein and export thereof duty free, is an advantage for that product which adversely affects the domestic goods suffering 5% excise duty cleared for domestic consumption. Accordingly, the levy of ACD @ 5% on the imported goods is meant to offset the burden of excise duty on the domestic goods. Therefore, no levy of ACD @ 5% defeats the object of fair trade making Indian goods costlier by 4% or 3% as the case may be than the imported goods. Tribunal had occasion to deal with similarly situated case in the case of Howrah Ispat Pvt. Ltd. Vs. CC (Prev), Patna [2008 (227) ELT 136 (Tri. –Kol.)] in following terms:-

> "***6.*** *Shri Bagaria, learned Sr. Advocate, in the above context, states that the cited decisions of the Hon'ble Supreme Court in J.K. Synthetics (supra) and Hyderabad Industries (supra) were not brought to the notice of the Larger Bench which had decided earlier the appellants' own case. Hence, he urges this Bench to examine the matter afresh and allow the exemption in question.*
>
> ***7.*** *After considering the arguments from both sides as well as the case records and cited decisions, we find that the same issue was the subject matter of the Tribunal in the appellants' own case in the case of M/s. Howrah Ispat v. CC(P), West Bengal reported in 2003 (160)* ***E.L.T.*** *1022. The appellants have not gone in further*

appeal, but have accepted the said decision. Moreover, the Tribunal in that case followed the decision of the 5 Members Larger Bench in the case of Priyesh Chemicals (supra), which also has not been appealed against. The cited decisions of the Hon'ble Supreme Court were very much available to the appellants, but these were not cited. Moreover, we find that the learned Advocate appearing for the department brings to our notice that a 3 Judges Bench of the Hon'ble Supreme Court in the case of CCE, Navi Mumbai v. Amar Bitumen & Allied Products Pvt. Ltd. - 2006 (202) ***E.L.T.*** *213 (S.C.) has held that when the Order of the Tribunal on the same question is not appealed against, the issue attains finality and questioning its correctness later on, is not permissible."*

8.9 The Board circular relied by Revenue subscribes to the aforesaid proposition of law. In view of the mandate of the law that the goods imported shall be treated as like article, produced and manufactured in India, there cannot be plea that such goods are excluded from availing CENVAT credit. Hon'ble apex court in the case of ***Hyderabad Industries Vs. Union of India [1999 (108) ELT 321 (SC)]*** has held that the levy of ACD is justified if the goods are capable of manufacture in India and are not in fact manufactured in India. The levy of ACD shall be equal to the excise duty leviable on the imported goods as if that is manufactured in India. When the duty remission by way of CENVAT credit is admissible to the output, the goods imported into India shall be treated as manufactured in India and the respondent shall fail to succeed on the plea

Anil.

that the imported goods have not availed the duty remission for exports under WTO regime.

8.10 Respondents' reliance in the case of ***Mapsa Tapes Pvt. Ltd. Vs. CCE, Delhi-IV [2009 (247) ELT 188 (Tri. –Del.)]*** and in the case of ***Prashray Overseas Pvt. Ltd. Vs. CC, Chennai [2008 (232) ELT 63 (Tri. –Chennai)]*** is misplaced for the reason that the case of *Priyesh Chemicals and Metals* was decided in 2005 and the case of *Mapsa Tapes Pvt. Ltd.* was decided on 26.05.2009 without considering the decision of the Larger Bench of the Tribunal in the case of Priyesh Chemicals and Metals. In the case of Mapsa Tapes Pvt. Ltd., the goods imported was woven fabrics and such woven fabric being manufactured out of silk yarn and waste silk yarn, which are not liable to excise duty in India were exempted from CVD. But in the present case of the respondents, there was no import of the input, which are duty free under central excise law in India nor the homeopathy goods is duty free under Central Excise Tariff Act, 1985. Law is well settled that if excise duty is not leviable on the manufacture of goods, the question of import of like goods to suffer any additional customs duty does not arise as has been held in the case of ***CCE, Amritsar Vs. M/s. Malwa Industries Ltd. [2009 (235) ELT 214 (SC)]***. Therefore, the respondents are liable to ACD equal to central excise duty as if the goods imported were manufactured in India with all remissions, concessions and impositions. The facts and circumstances of ***M/s. Dhana Exim Vs. CC, Chennai [2006 (193) ELT 565 (Tri. – Chennai)]*** and ***CCE, Madras Vs. Sudharsan Pine Products Ltd. [1999 (111) ELT 78 (Tribunal)]*** relied by respondent are altogether different from the present context of the case.

8.11 When an exemption or concession in duty is granted on certain goods, the Notification so granting or exempting is read strictly and not casually to ascertain the intention, scope and object thereof. The Notification No.01/2011-C.E., dated 01.03.2011 prescribing concessional duty is available to the goods exported without availing CENVAT credit. The plea of no CENVAT credit availed by the homeopathic medicines exported is contrary to the WTO agreement made between the member countries in absence of satisfaction of conditions of the Notification by the respondent who has failed to discharge the burden of proof in this regard.

8.12 It may be reiterated that the levy of ACD having been settled by apex court in the case of ***Hyderabad Industries Vs. Union of India [1999 (108) ELT 321 (SC)]*** holding that the goods coming to India are liable to ACD, which is equal to the excise duty on the premises that such goods come into existence as a result of production, manufacture of like article in India, the levy of ACD @ 5% to counter-balance the excise duty leviable is justified.

8.13 An exemption Notification is read strictly. The claimant of such benefit has to prove that conditions of the Notification have been satisfied discharging burden of proof following the ratio laid down in the case of ***Motiram Polaram Vs. Union of India [1999 (112) ELT 749 (SC)]*** and the ratio laid down in the case of ***Eagle Flask Industries Ltd. Vs. CCE, Pune [2004 (171) ELT 296 (SC)]***. The respondents failed to discharge the burden of proof to the effect that the goods imported did not avail remission of CENVAT in the exporting country under WTO agreement.

8.14 For the reasoning stated above, it is not desirable to burden this order with further citations made by both the sides, which shall be a redundant exercise. Accordingly, all the appeals filed by Revenue are allowed upholding the adjudication and the orders passed by ld. commissioner (Appeals) are set aside.

(Pronounced in the open Court on 23.09.2014.)

23.9.2014
(MANMOHAN SINGH)
TECHNICAL MEMBER

23.09.2014.
(D.N.PANDA)
JUDICIAL MEMBER

SSK