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

Appeal No. E/4292/2004 Date 12/08/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SURYA PHARMACEUTICALS LTD.
383, INDUSTRIAL AREA, PHASE-I, PANCHKULA
(HARYANA)

M/S SURYA PHARMACEUTICALS LTD. Appellant
Vs
C.C.E. PANCHKULA (HARYANA) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 589/08-EX **Excise** dated 4-8-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. PANCHKULA (HARYANA)
   NEW CGO COMPLEX, N.H.IV, FARIDABAD (HARYANA)
2. Adv. / Consult
   MR.J.P.KAUSHIK
   A-14/3, SFS FLATS, SAKET, NEW DELHI-110017
3. S.D.R.
~~4. CDR~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 4292 of 2004

[Arising out of Order-in-Appeal No. 40-CE/Appl/Div.PCK/DIII/2004 dated 22.7.2004 passed by Commissioner of Central Excise (Appeals), Faridabad, Haryana]

Date of Hearing/ decision : 25.7.2008

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Surya Pharmaceuticals Limited — Appellant

Vs.

CCE, Panchkula — Respondent

Appearance:
Shri J.P. Kaushik, Advocate for the Appellant
Shri C.S. Rajput, DR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

FINAL **ORDER NO. 589/08-EX**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order No. 40-CE/Appl/Div.PCK/ DIII/2004 dated 22.7.2004 of the Commissioner (Appeals).

2. We heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The appellant a manufacturer of bulk drugs has sent the inputs on which they have taken credit to the job worker for processing. At the time of sending the raw materials they reversed 10% value of the inputs towards credit taken by them. They have claimed to have received back the processed goods. After receipt of the processed goods they have taken the credit which they reversed at the time of sending the raw materials for job work.

b) The original authority held that they had produced certain by-products and waste which have not been received back from the job worker. Therefore, he demanded duty amounting to Rs. 17,96,000/- and also imposed equal amount of penalty.

c) Before the Commissioner (Appeals), the appellant pleaded that their duty demand has been worked out without taking into account several relevant facts. The Commissioner (Appeals) however, did not agree to the contention of the appellant and rejected the appeal.

4.1. Learned Advocate for the appellant submits that the demand has been raised without appreciating the relevant facts and the law.

4.2. He submitted that they had sent 8105 Kgs of inputs for Ampicillin Trihydrate Crude and received back 1000 Kgs. Ampicillin Trihydrate Crude which represented the entire quantity of processed goods: whatever was the quantity of waste, by product generated has been cleared on payment of appropriate duty by the job worker. He made similar submission in respect of Amoxycillin Trihydrade Crude. In respect of other products, it was submitted that there was no by-product or waste involved.

5. Learned DR submits that the appellant having removed the inputs for processing ought to have returned back the entire quantity of processed goods back to the premises along with by-products and waste, so that the credit availed is regularised. It was permissible that waste and by product could have been cleared

on payment of duty from the job worker's end. The appellant ought to have produced evidence before the original authority that the by-product and waste has been cleared on payment of duties from the job worker's premises. The Commissioner (Appeals) was right in upholding the order of the original authority.

6.1. We have carefully considered the submissions from both sides. The appellant has sent the inputs on which they have taken credit to the job worker for processing after reversing 10% value of the inputs towards credit taken by them. They have claimed to have received back the processed goods and taken back the credit which they reversed at the time of sending the raw materials for job work. We hold that the appellant was under an obligation to account for the entire inputs sent by them to the job worker for processing in the form of processed goods, by-products and waste.

6.2. If the by products and waste had been cleared on payment of duty by the job worker as claimed by the appellant the same should have been reconciled by the appellant before the original authority. We find that the appellant has been producing additional evidence in instalments first before the Commissioner (Appeals) and now before the Tribunal. They have produced certain affidavit (claimed to be supported by invoices) about disposal of waste and by product on payment of duty and same is produced for the first time before the Tribunal. We are not inclined to go into veracity of the claim made by the appellant ourselves.

6.3. Learned Advocate also submitted that even while the Department admitted receipt of part of the processed goods back in the factory the demand has been raised by denying the credit on the entire quantity of inputs removed to the job worker . This denial of entire credit/ demand of duty even in respect of admittedly received processed goods are not sustainable.

7. In the light of the above, we set-aside the order and the Commissioner (Appeals) and order of the original authority and remand the matter for fresh consideration by the original authority on the following terms.

(a) The appellant shall produce reconciliation of the inputs removed by them including details of processed goods, by-product and waste supported by SION norms before the original authority. They shall also produce the evidence relating to disposal of by-product /waste on payment of duty by the job worker to enable verification by the original authority. The appellant shall make available evidence within 45 days from the date of receipt of this order.

(b) The original authority shall thereupon reconcile and demand duty, if any, in relation to processed goods, which are not accounted for and the by-product and waste not returned back and not proved to have been cleared on payment of duty by the job worker. He shall dispose of the matter in the light of provisions contained in Rule 57F(5), (6), (8), (11) and (18) of the erstwhile Cental Excise Rules 19944 and other applicable provision. Whether penalty is warranted and if so, to what extent shall also be decided in denovo consideration.

(c) The original authority shall decide the issue within two months from the date of expiry of time limit for submission of evidence by the appellant and after granting reasonable opportunity of hearing.

8. The appeal is allowed by way of remand on the above terms.

(Dictated and pronounced in the open Court on 25.07.2008)

[M. Veeraiyan]
Member [Technical]

[D.N. Panda]
Member [Judicial]

[Pant]