

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

Appeal No. E-4021/2004

Date 25/07/2008

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

To :
M S SMILAX PHARMACEUTICALS
11-KM STONE, TONK ROAD, P.O. AIRPORT,
SANGANER, JAIPUR
M S SMILAX PHARMACEUTICALS

C.C.E. JAIPUR

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of **Final order No.514/2008-**

Excise dated **23-7-08**

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. JAIPUR

NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

2. Adv. / Consult

SH. ATUL GUPTA, C.S.
B-1/1289-A, VASANT KUNJ,
N. DELHI-70

3. C.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (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

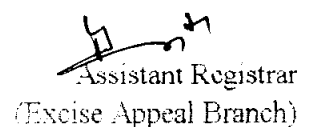
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066**

Court No.III

Date of hearing: 22.7.2008

Central Excise Appeal No.4021 of 2004

Arising out of the order in appeal No.193 (SN) CE/JPR-I/2004 dated 19.5.04 passed by the Commissioner (Appeals), Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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

Appellant

Respondent

M/s Smilax Pharmaceuticals

vs.

C.C.E.,
Jaipur

Appearance:

Shri Atul Gupta, C.S. for the appellant and
Shri V.K. Agrawal, Authorized Departmental Representative (DR)
for the Revenue

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

Final Order No. 514/2008-EX

Per D.N. Panda:

The appellant's grievance is in a narrow campus praying for allowing breakage allowance from assessable value. But the learned Consultant appearing for the appellant fairly agrees that such practice in the industry could not get legal recognition in view of the Hon'ble Supreme Court's decision in the case of C.C.E., Chandigarh vs. IPF Vikram India Ltd. – 2002 (144) ELT 4

(SC). He , therefore, prays that Tribunal may leniently consider the waiver of penalty while the issue is already covered by above judgment. Learned DR also agrees to the proposal of the Appellant to end the litigation. Considering the facts and circumstances of the case and fair submission of the learned representative , it would be proper to confirm the demand of duty and set aside the penalty imposed under Section 11AC. We order accordingly. In the result, appeal is allowed partly.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Member (Judicial)
scd/

(M. Veeraiyan) ,
Member (Technical)