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

Appeal No. E/3748/2006-SM[BR] Date 05/06/2008

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

To :
M/S SOCRUS PHARMACEUTICAL LTD
PLOT NO 252, SECTOR-1, PITHAMPUR, DISTT-DHAR(MP)

M/S SOCRUS PHARMACEUTICAL LTD Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 858 /20078-SM[BR] dated 28.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
3. S.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 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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

**Excise Appeal No. 3748 of 2006-SM**

(Arising out of Order-in-Appeal No. IND-I/265 & 266/2006 dated 18.7.2006 passed by the Commissioner (Appeals), Central Excise & Customs, Indore)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

| | | |
|---|---|---|
| **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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| **3.** | Whether their Lordships wish to see the fair copy of the order? | Yes |
| **4.** | Whether order is to be circulated to the Departmental authorities. | No |

M/s Socrus Pharmaceuticals Ltd. — Appellant

Vs.

CCE, Indore — Respondent

Appearance:
Shri Ramesh Nair, Advocate - For appellant
Ms. Archana Pandey Tiwari, Jt. CDR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 28.5.2008

Final Order No. 858/08-SM(BR) dated 28.5.08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby demand of Rs.1,61,428/- was confirmed

and penalties of the equal amount was imposed. The appellants are engaged in the manufacture of P & P medicine both dutiable as well as exempted one. On 2.9.2000, officers of Revenue visited the factory premises of the appellant and during verification it was found that inputs such as vials and packing material were used in the manufacture of exempted final product on which credit has been availed. Show-cause notice was issued for disallowance of Cenvat credit and for imposition of penalty. The adjudicating authority confirmed the demand and imposed the penalty. The appellant filed appeal and Commissioner (Appeals) dismissed the appeal.

3. The contention of the appellant is that they purchased the vials from one M/s Barkha Bottle Bhandar who is a trader and no credit has been availed in respect of the material received from M/s Barkha Bottle Bhandar and the same were used in the manufacture of exempted goods. The payments were made through banking channel. The material was duly received in the factory and entered in the statutory record and issued for

manufacture of goods. The contention is that the Revenue is disputing the receipt of the material only on the ground that the transporter denied the transportation of goods from M/s Barkha Bottle Bhandar to the appellant. The contention is that the goods were received during the period 1998 to 2001 whereas the statement of transporter was recorded in December 2002 and transporter in their statement admitted that LRs regarding transportation of goods were destroyed every year. As no LR is available with the transporter for the year 2001, therefore, the statement of the transporter that they had not transported any goods is without any basis. The supplier of the material in his statement admitted that the material in question is supplied to the appellant under challans and subsequently the invoices were issued and they had received the consideration amounts through banking channel. The only discrepancy pointed out by the Revenue in this respect that challans and invoices are not serially numbered. The contention is that the supplier of the inputs admitted the supply of the material to the appellant and also admitted the receipt of consideration amounts through banking channel, therefore, credit cannot be denied.

4. The contention of the Revenue is that investigation shown that the supplier of the material has not actually supplied the material as the transporter denied the transportation of the material. The Revenue also submitted that documentary evidence in respect of receipt of goods under challans and invoices was produced subsequently to the visit of the officers. As the material in question was not received by the appellant, therefore, the credit was rightly denied in respect of inputs which are used in the manufacture of exempted goods.

5. In this case the appellant's submission is that they had received the material in question from the trader, the trader in his statement admitted that supply of the material and payments made through banking channel the material was duly entered in the statutory records and issued for manufacture of exempted goods. The payments were made through banking channel and there is no evidence on record to show that the amounts for consideration paid

by the appellants were subsequently received by them. The main contention of the Revenue is that transporter denied the transportation of the goods and finds the LRs are destroyed every year and the statements of transporter were recorded in the year 2002 which are in respect of the goods supplied in the year 1998 to 2001, therefore, the statements are not based on the records maintained by them. In these circumstances, as the material in question is received by the appellant under the cover of challans and invoices and payments were made through banking channel, I find merit in the contention of the appellant. The impugned order is set aside and appeals ~~is~~ are allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM