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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/3763/2006-SM[BR] Date 09/05/2008

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

To :
C.C..E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C..E.CHANDIGARH Appellant
Vs
M/S SURYA PHARMACEUTICALS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 724 /2008 –SM[BR] dated 3.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S SURYA PHARMACEUTICALS LTD
   87, HPSIDC, INDL AREA, BADDI.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No. 3763 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.793/CE/CHD/2006 dated 29.8.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh).

Date of Hearing/Decision:3.3.08

For approval and signature:

Hon, ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should 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? :
4. Whether Order is to be circulated to the Departmental authorities? :

CCE, Chandigarh ...Appellants

[Rep. by Shri S.L. Meena, Authorised Departmental Representative DR]

Vs.

M/s. Surya Pharmaceuticals Ltd. ...Respondent

[Rep. by Mr. K.K. Sharma, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 724/08-SM(BR)/Dated: 3.3.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of P or P medicaments classifiable under Chapter 30 of the Central Excise Tariff Act, 1985. During the course of audit of records, it was noticed that the respondent received duty paid inputs viz. "Cloxacillin Sodiums Compacted" on the basis of invoices, where duty was paid on the value ranged from Rs.1650/- to Rs.1700/- per kg. It has been alleged in the show cause notice that the Government fixed the price of Cloxacillin Sodiums Compacted at Rs.1,421/- per kg. w.e.f. 3.3.2000. It has further been alleged that the inputs' suppliers paid the excess duty beyond the price fixed by the Government, which cannot be treated as duty in real sense and Respondents are not entitled to avail credit on excess duty. The adjudicating authority confirmed the demand of duty under Rule 57 AH of the Central Excise Rules and Rule 12 of Cenvat Credit Rules, 2001-2002 and also imposed penalty of equal amount along with interest. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed this appeal.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the respondent is not entitled to take credit the amount of duty on value beyond the price fixed by the Government. He further submits that in the present case input supplier paid the amount of duty on the value

beyond the price fixed by the Government, cannot be treated as duty and the said amount would be treated as Government deposit. Therefore, the respondent is not entitled to take credit on the value beyond theprice fixed by the Government. He further submits that the respondent did not supply the documents to the Revenue and extended period of limitation has rightly been invoked.

3. Ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the respondent availed credit on the basis of duty paying documents. He relied upon the decisions of the Tribunal as under:-

(a) Commissioner of Central Excise, Goa Vs. Courtaulds Packaging (I) Ltd. 2007 (217) ELT 399 (T-M)

(b) Commissioner of Central Excise, Vadodara Vs. Hylite Cables 2007 (212) ELT 284 (T-A)

(c) Collector of Central Excise, Rajkot Vs. Hindustan Lever Ltd. 2000 (121) ELT 437 (T-M)

(d) Kerala State Electronic Corporation Vs. Collector of Central Excise, Kochi – 1996 (84) ELT 44 (T-M).

4. After hearing both the sides and on perusal of the records, I find that the respondent availed credit on the basis of duty paid invoices. It is seen that the jurisdictional central excise officers of the Respondent reassess the value of the inputs on the basis of Government price fixed on inputs. There is no material placed by the Revenue that the excess amount of duty paid by

the input supplier was either refunded to them or disputed by the jurisdictional officers of input supplies. The Tribunal in the case of Hylite Cables (supra) held that at the hands of input receiver, Department claiming the process undertaken by input supplier did not amount to manufacture, and sum paid by him was not duty, and recipient of inputs was not entitled to its credit. But that sum was neither refunded to input supplies nor disputed by the jurisdictional officers of input supplier, credit cannot be denied to input receiver, especially as the situation was revenue neutral. Similarly, the Tribunal in the case of Courtaulds Packaging (I) Ltd. (supra) held that it is well settled law that once classification was not challenged at seller's end, same goods cannot be reclassified at recipient's end. So, in the present case, denial of credit on the basis of valuation dispute at the recipient's end is not justified. I also note that the Commissioner (Appeals) had given detailed finding on points of limitation as well as on merit. Therefore, I do not find any justification to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 3.3.2008.

(P.K. Das)
Member (Judicial)

Ckp.