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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/2559/2007 – SM[BR] Date 06/10/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S UNICHEM LABORATORIES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1174 / 2009 –SM[BR] dated 8.9.2009 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 UNICHEM LABORATORIES LTD
BHATAULI KALAN, BADDI, DISTT. SOLAN (HP)
2. Adv. / Consult SHRI SUMIT KUMAR GAUR ADV.
E-122, PATEL NAGAR –II
GHAZIABAD[U.P]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

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

Appeal No.E/2559/07-SM

[Arising out of Order-in-Appeal No.207/CE/CHD/2007 dated 26.06.2007 passed by the Commissioner of Central Excise, Chandigarh].

Date of Hearing:08.09.2009
Date of decision: 08.09.2009

CCE, Chandigarh ...Appellant

Vs.

M/s. Unichem Laboratories Ltd. ... Respondent

Present for the Appellant :Shri. V.K. Saxena, JCDR
Present for the Respondent:Shri Sumit Kumar Goar, Advocate

CORAM:HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final **ORDER NO.** 1174/2009-SM(BR) **DATED:08.09.2009**

PER: RAKESH KUMAR

The basic issue involved in this appeal of the Revenue is as to whether the sample of drugs drawn in the course of manufacture, before the RG I stage for quality control purposes, are liable for central excise duty. The Deptt. holding that such samples drawn during the period from 2001-02 to 2002-03 are liable for Central Excise duty and confirmed the duty demand of Rs.49,048/- against the respondent alongwith interest under section11AB and imposed penalty of equal amount. However the Commissioner of Central Excise (Appeals) vide the impugned order in appeal dated 26.06.07

set aside the Asstt. Commissioner's Order. The revenue is in appeal against this order of the Commissioner (Appeals).

2. Heard both the sides.

3. Shri S. Gautam ld. DR reiterating the grounds of Revenue's appeal, pleaded that the samples were excisable and hence the respondents should have paid Central Excise Duty in respect of the same.

4. Shri Rajesh Chhibber the ld. Counsel for the respondent, pleaded that the samples have been drawn before the RGI stage and the purpose of drawing these samples was to ascertain as to whether the medicines being manufactured are of desired quality or not as per the provisions of Drug Control Act, that the stage at which the samples had been drawn, the goods are not marketable and hence the same were not excisable, that in this regard he relies upon Tribunal's judgment in the case of Omega Pharma vs. Commissioner of Central Excise, Rajkot reported in 2006 (286) E.L.T. 908 (Tri. Mumbai) and also Tribunal's judgment in the case of Dr. Reddy's Laboratories Ltd. reported in 2008 (221) ELT 243 (Tri. Bang.). He also pleaded that in any case, the show cause notice issued in March, 2006 for demand of duty, allegedly short paid duty during the period from 2001-02, 2002-03 is time barred as there was no suppression of any facts in this case.

5. I have carefully considered the submissions from both the sides and perused the records. There is no dispute that samples of the medicines had been drawn in the course of manufacture, that is, before the RGI stage and the purpose of drawing these samples was to test their quality. If any batch is not found to be of the desired quality, the same is rejected and is not marketed. Since these samples are used during analysis before declaring a batch fit for marketing, the same cannot be held to have been cleared after completion of manufacture in fully finished form. Hence these batch analysis samples used in testing are not liable to excise duty. I find that the same view has been taken by the Tribunal in the case of Omega Pharma (supra) and also Tribunal's judgment in the case of Dr. Reddy's Laboratories Ltd. (supra). In view of this, I find no infirmity in the impugned order. The Revenue's appeal is dismissed.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita