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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/182 /2007 – SM[BR] Date 06/11/2009

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

To :
M/S SURYA PHARMACEUTICAL LTD
383, INDUSTRIAL AREA, PHASE-I, BAHALGARH,
DISTT- SONEPAT.

M/S SURYA PHARMACEUTICAL LTD Appellant
Vs
C.C.E.PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1410 / 2009 –SM[BR] dated 30.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E.PANCHKULA
   SCO NO 407 & 408, SECTOR-8, PANCHKULA(HR)
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. 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)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 30.9.2009

Central Excise Appeal No.182 of 2007-SM

Arising out of the order in appeal No.300/NS/PCK/2008 dated 19.10.2008 passed by the Commissioner (Appeals), Central Excise, Delhi III, Gurgaon.

M/s Surya Pharmaceutical Ltd. .... Appellant

Vs.

C.C.E., Panchkula .... Respondent

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

Appearance:

Ms. Asmita Nayak, Advocate for the appellant(s)
Shri R.K. Verma, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1410/2009 SM (BR)

Per M. Veeraiyan :

This is an appeal against the order of Commissioner (Appeals) No. 300/NS/PCK/2008 dated 19.10.2008 which itself was passed in pursuance of the CESTAT remand order No.1519/05-IV dated 15th June, 2005.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant is a manufacturer of bulk drugs falling under Chapter 2941.10.The officers visited the factory on 27.7.98. It was noticed by them that the stock of Amoxycillin Trihydrate as

per RG-1 register should have been 1,887 kgs. but on physical verification found only 1181 kgs. and thus there was a shortage of 708 kgs. valued at Rs.1200200/-. At the time of visit by the officers, Shri Rajiv Goyal, Managing Director was present and his statement has been recorded on the spot. Shri Goyal explained the reasons for the shortages. According to him, they received a specific export order for 1800 kgs.; that to make 500 kgs. Lots, as per the customer's requirement, they had issued materials manufactured in earlier batches which were accounted in RG-1. However, a show cause notice was issued alleging that short found quantity has been removed clandestinely and accordingly, the original authority confirmed the demand of Rs.2,16,036/- along with interest and imposed penalty of equal amount under Section 11AC read with Rule 9(2), 173Q and 226 of the Central Excise Rules, 1944. The Commissioner (Appeals) upheld the order of the original authority holding that the shortage vis-à-vis RG-1 stock is conclusive evidence of removal of goods without payment of duty.

4. Learned Advocate for the appellants submits that they received the export order dated 24.7.98 for 1800 kgs. The requirement of lots for export order was different from the lots meant for domestic clearances. In view of urgency involved in the supply for export, they issued some quantity from the finishing store room and used the said material for blending with other goods in process in the finishing room. This was explained, on the date of visit of the officers, on the spot by the Managing Director, in his statement given before the officers. It is true that goods accounted in the RG 1 has been issued for further processing, as mentioned above, without preparation of any document. However, it was only a technical error as the entire goods alleged to have been found short have been blended and converted into lots for export and exported on payment of duty. Therefore, she seeks setting aside the demand of duty and imposition of penalty.

5. Learned SDR has taken me through the finding of the original authority wherein the defence submission that 500 kgs. of goods used in lot number 98L0724 was used in blender and the work of blending was completed at 14

hrs. and the balance quantiy of 206 kgs. was lying in the floor in lot number 98L0725. However, the original authority has rightly held that the explanation given by the party was not convincing. He also submits that panchnama does not refer to transfer of goods from store room to finishing hall. The statement of the Managing Director Shri Goyal was also not specific to this effect.

6. I have carefully considered the submissions from both sides and perused the records. It is not disputed that ,as against RG-1 stock of 1887 kgs., what was available in the store room was only 1181 kgs. and there was shortage of 706 kgs. in the store room as found by the officers. The Managing Director has given explanation on the spot that short found quantity had been issued to the shop floor for the purpose of blending with other goods processed for executing the urgent order for export. No doubt, the goods which were entered in RG-1 register should have been removed for further processing only on documentation. There is failure to enter the clearances of such goods from store room for the purpose of further processing. It is also not disputed that the explanation for the shortage has been given by the Managing Director who was present during the visit of the officers. No evidence to contradict the prompt claim of the Director given before the officers has been relied upon. It was just a presumption that what was found short compared to the RG-1 stock might have been clandestinely removed. Such a presumption can not be upheld especially in the absence of any corroborative evidence of such clandestine removal. The explanation for the shortage offered by the Managing Director is duly recorded in the show cause notice and the order of the lower authority which appears reasonable and acceptable in the absence of any evidence to the contrary. However, it is not disputed by the appellant that there was failure in not properly maintaining the RG-1 accounts inasmuch as they have failed to make entries for clearance from the store room. Taking the entire facts and circumstances into account, the appeal is partly allowed by setting aside the

order for demand of duty and interest. Penalty imposed is modified and reduced to Rs. 2000/- under Rule 206 of the erstwhile Central Excise Rules 1944.

7. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/