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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/2578/2008 – SM[BR] Date 15/10/2010

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II Appellant
Vs
M/S UDAIPUR SURGICALS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1111 / 2010 –SM[BR] dated 20.9.2010 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 UDAIPUR SURGICALS PVT LTD
   117, HAWA MAGRI, SUKHER, UDAIPUR
2. Adv. / Consult
   NONE:------------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, 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, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:26.08.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, 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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

Excise Appeal No.2578 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.147(DK)CE/JPR-II/2008 dated 22.09.2008 passed by the Commissioner of Central Excise (Appeals-II), Jaipur].

CCE, Jaipur-II — Appellant

Vs.

M/s. Udaipur Surgicals Pvt. Ltd. — Respondent

Appearance: Rep. by Shri K.P. Singh, SDR on behalf of the appellants.
Rep. by none on behalf of the respondent/Deptt.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No...1111/2010 SM(BR)/Dated:26.08.2010

Per Ashok Jindal:

Revenue filed this appeal against the impugned order, wherein the Commissioner (Appeals) has accepted that Form-H is a document, which can be accepted in support of claim of export.

2. The facts of the case are that the respondents are manufacturer of pharmaceutical products and availing SSI exemption under Notification No.8/2001-CE dated 1.3.2001. During the course of audit, it was noticed that the respondents cleared the goods upto October, 2002 to the tune of Rs.97,58,468/- and during the month of November, 2002, they cleared the goods valued at Rs.20,21,185/-. The respondent started to pay duty on their clearance from 16.11.2002. It was noticed that on 2.11.2002, the respondents crossed exemption limit of Rs.1 crore and cleared their goods at nil rate of duty whereas they were required to pay duty on the value of clearances in excess of Rs.1 Crore. It was revealed that on 1.11.2002, the respondent had cleared the goods valued at Rs.2,68,117/- vide Invoice No.315 dated 1.11.2002 as exported by the consignee at Delhi. It was alleged that the said goods cleared on 1st November, 2002, On examination of invoice, it was found that the goods were cleared to M/s. Sunlight Surgicals, 45-Model Basti, Karol Bagh, New Delhi and no ARE-I for export was issued to the assessee. Accordingly, it was alleged that the impugned clearance has been made for home consumption. A show cause notice was issued for demanding duty on the clearances of Rs.2,47,930/- confirmed along with interest and penalties.

3. Aggrieved by the said order, the respondent preferred an appeal before the Commissioner (Appeals) and submitted that as per Circular No.648/39/2002-CE dated 25.07.2002 in the case of export by the exempted units through merchant exporter, the documents prescribed by

the Sales ~~Service~~ Tax Department that Form-H or Sales ~~Service~~ Tax –XXII Form will be accepted as proof of export. It was also clarified that this facility is available in respect of exempted units, which undertake themselves or through merchant exporters directly from the unit itself. On the said submission made by the respondent, the Commissioner (Appeals) rejected the adjudication order. Revenue is in appeal against the order of the Commissioner (Appeals).

4. Ld. DR drew my attention to the paragraphs 3 of their grounds of appeal wherein it was mentioned that "the facility is not available for the supplies made to any other domestic manufacturer who may not export its finished products and submitted that the exemption given by the Board's Circular is not applicable to this case.

5. None appeared on behalf of the respondent nor any request for adjournment has been received. The matter has been taken on merits for disposal.

6. Heard and considered.

7. I have gone through the impugned order, wherein the Commissioner (Appeals) has observed in paragraph 7 of his order, which is reproduced as under:-

> "I observe that the matter relates to the period November, 2002. At the relevant time, the appellant was availing the SSI exemption under Notification No.8/2001-CE dated 1.3.2001, as amended. The appellant started to pay duty from 16.11.2002. The appellant cleared the goods valued at Rs.2,68,117/- vide invoice no.315 dated 1.11.2002, the value of which was not included in the exemption

limit of Rs.1 Crore. These goods were cleared to M/s. Sunlight Surgicals, New Delhi and no ARE-I export was issued. The value of clearances on which duty was not paid was calculated to Rs.2,47,930/- attracting central excise duty of Rs.11,378/- thereon. The appellant deposited Rs.11,375/- vide TR-6 challan No.51 dated 30.11.2007 under protest. The contention of appellant is that they cleared the said goods to merchant exporter i.e. M/s. Sunlight Surgicals, New Delhi and the said merchant exporter has issued Form 'H' as prescribed by the sales tax department which may be treated as proof of export."

8. From the perusal of the impugned order, it is categorically mentioned that the respondents have cleared the goods to the merchant exporter, who issued Form H as prescribed by the Sales Tax Department. I find how the Department has changed the facts of the case in paragraph 3 of the grounds of appeal. The Commissioner (Appeals) has rightly allowed the claim of the respondent, which is upheld. This appeal has been filed on false ground, which should not be allowed. Hence, I do not find any merit in the appeal. The same is rejected.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Ckp.