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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2874/2009 - EX[DB] WITH E/S/2955/2009-EX Date 19/02/2010

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

To :
M/S RHYDBURG PHARMACEUTICALS LTD.
C-2 & 3, SARA INDUSTRIAL ESTATE, SELAKUI,
DEHRADUN.
M/S RHYDBURG PHARMACEUTICALS LTD. Appellant
Vs
C.C.E. MEERUT- I STAY ORDER NO.130/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 72/ 2010 EX[DB]** dated 16-2-2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.RAJESH GUPTA, ACA
   SHOP NO 3,FIRST FLOOR,
   SHALEEN ARCADE, 21-NEW ROAD, DEHRADUN.
3. C.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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 15.2.2010

Stay Application No.2955 of 2009 and Central Excise Appeal No.2874 of 2009

Arising out of the order in appeal No.63-CE/MRT-I/2009 dated 25.5.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut I..

For Approval and Signature:

Hon'ble Dr.C. Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

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

Rhydburg Pharmaceuticals Ltd. ... Appellant/applicant

Vs.

C.C.E., Meerut I .... Respondent

Appearance:

Shri Rajesh Gupta, Chartered Accountant for the appellant/applicant
Shri Vijai Kumar, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

Stay Oral Order No. 130/2010 - EX
Final order No. 72/2010 - EX

Per Dr. C. Satapathy:

After hearing the matter for some time, we find that the appeal can be disposed of today itself and hence with the consent of both the sides and after waiving the requirement of pre-deposit, we proceed to hear and decide the appeal itself.

2. Shri Rajesh Gupta, learned Chartered Accountant appearing for the appellant states that the appellant started a new unit in Uttarakhand and furnished the necessary declaration with the Departmental authorities on

10.4.2006 which was received by the Departmental authorities on 12.4.2006. However, the appellant while giving declaration did not mention the Notification No.49/2003-CE dated 10.6.2003 in the declaration and hence the benefit of the notification has been denied by the authorities below for the period 17.4.2006 to 14.7.2006. For the subsequent period, the appellants have given declaration containing the Notification No. and after due examination, the Departmental authorities have extended the benefit of the said Notification.

3. Heard the learned SDR. He clarifies that after denying the exemption for the relevant period, the duty liability has been calculated with reference to the total clearance including the clearance from the other unit of the appellant.

4. After hearing both sides, we find that the appellants have given due declaration prior to the date of availing exemption under the relevant Notification. In the correspondence from the Departmental authorities, we find that the impugned Notification has been prominently mentioned as seen from the letter dated 19.5.2006 from the jurisdictional Range Superintendent to the appellants. As such, we find that there was no doubt that the appellants had submitted the declaration in the month of April, 2006 for the purpose of availing exemption under Notification No.49/2003-CE. Mere non-mentioning of the Notification No. in the letter cannot be fatal for availing the exemption when they are otherwise eligible for the said exemption. Hence we set aside the impugned order and allow the appeal.

(Dr. C. Satapathy)
Member (Technical)

(D.N. Panda)
Member (Judicial)

scd/