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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/1290/2008 – SM[BR] AND E / 932 / 2009 –SM[BR] Date 19/07/2010

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

To :
M/S AHLCON PARENTERALS (I) LTD
SP-918, RIICO INDUSTRIAL AREA, BHIWADI.

[2] M/S AHLCON PARENTERALS [INDIA] LTD.
SP-918, RIICO INDUSTRIAL AREA, BHIWADI [RAJ.]

M/S AHLCON PARENTERALS (I) LTD Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 759 – 760 / 2010 –SM[BR] dated 7.7.2010 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.J M SHARMA
   252, BASANT ENCLAVE,(NEAR VASANT VIHAR) N DELHI-110057

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **7.7.2010**

Excise Appeal No. 1290 of 2008-SM and 932 of 2009

[Arising out of Order-in-Appeal No. 61(RKS)/CE/JPR-I/2008 dated 17.4.2008 dated 26.3.2008 and 08(DK)/CE/JPR-I/2009 dated 20.1.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For approval and signature:

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

1.	Whether Press Reporters 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 the 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

M/s Ahlcon Parenterals (I) Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Appeared for the Appellant - Shri J.M. Sharma, Consultant

Appeared for the Respondent - Shri I. Baig, SDR

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

Final Order No. 759-760/2010 SM (Br) dated..................

Per **M. Veeraiyan** :

Appeal No. 1290 of 2008 is against the order of the Commissioner (Appeals) No. 61(RKS)/CE/JPR-I/2008 dated

26.3.2008 upholding the demand of duty of Rs.4,84,992/- along with interest but reducing the penalty from Rs.4,84,992/- to Rs. 50,000/-

1.2 Appeal No. 932 of 2009 is against the order of the Commissioner (Appeals) No. 08(DK)/CE/JPR-I/2009 dated 20.1.2009 by which recovery of Cenvat credit of Rs.5,35,897/- along with interest and imposition of penalty of Rs.10,000/- was upheld.

1.3 Both these appeals involve identical issues and, therefore, are being disposed of by this common order.

2. Heard both sides.

3. The relevant facts in brief are as follows :-

The appellant is a manufacturer of medicines falling under Chapter 30 of the CTA, 1985. Some of the medicines manufactured by them are fully exempted under Notification No.6/2002-CE dated 1.3.2002. The appellants are using plastic granules for the manufacture of bottles/containers used for packing of both dutiable and exempted medicines. It is claimed, during the course of hearing, that the manufacturing process is an integrated process and the packing containers/bottles do not emerge as separate products in the manufacturing line but only as medicines filled in the bottles/containers. It is also claimed that some of these packing materials, due to defects noticed either at the bottom or at the top, get rejected in respect of dutiable medicines as well as non-dutiable medicines. The resultant wastage is in the range of 35% to 40%. These materials are sold as waste and scrap at a considerably low price compared to the cost of granules used for manufacture of packing containers/bottles. The manufacture of dutiable medicines also results in waste and scrap of plastic and the appellants pay duty on the medicines and pay duty on the waste and scrap under Chapter Sub-Heading No. 3950. In respect of granules used for manufacture of bottles and containers for exempted medicines, he, no duty is paid on the medicines, but duty is paid on the waste and scrap of plastic arising during the process of manufacture of such exempted medicines.

The appellants received duty paid granules and took credit of duty paid on the quantity of granules earmarked for dutiable medicines including the waste and scrap arising out of the process of manufacture of dutiable medicines and as far as the granules used for the manufacture of exempted medicines, they took credit only on the estimated quantity of granules which were attributable to waste and scrap of plastic which were cleared on payment of duty.

Show Cause Notices were issued alleging that the credit taken on the waste and scrap of plastic arising out of manufacture of exempted medicines is in contravention of Rule 6(1) of the Cenvat Credit Rules, 2004. In pursuance to the Show Cause Notices, the original authority confirmed demands of duty holding that the appellants were not eligible for the credit taken on granules attributable to waste and scrap of plastic and imposed penalties.

Commissioner (Appeals) has upheld the demand and reduced the penalty substantially.

4. Ld. Consultant for the appellants submits that in respect of the process relating to manufacture of dutiable medicines, the final products emerging are the dutiable medicines, and the dutiable waste and scrap of plastics falling under Chapter Sub-Heading No. 3950. In respect of the process of manufacture of non-dutiable medicines, the final products emerging are non-dutiable medicines and dutiable waste and scrap of plastic falling under Sub-Heading No. 3950. He claims that both the medicines and waste and scrap are final products. It is immaterial whether the waste and scrap arose out of a conscious decision to manufacture such waste and scrap or by involuntarily action or as a consequence of manufacture of the main products viz. the medicines. There is no dispute regarding duty liability of the waste and scrap. Rule 6(1) of the Cenvat Credit Rules bars taking of credit only in respect of inputs going into manufacture of exempted products. As the dutiable medicines as well as waste and scrap of plastics are dutiable, their taking credit on plastic granules used in bottles/containers for dutiable medicines and plastic granules which is attributable to waste and scrap of plastic is in order. He also submits that the manner of taking credit based on a technical formula has been disclosed to the department from time to time and if there was any doubt, the department should have verified the correctness of the claim made by them. He relies on the Circular of the Board in F.No.345/20/2000-TRU dated 29.8.2000 to contend that the credit

can be utilised for paying duty on waste and scrap as well. He also relies on the decision of the Tribunal in the case of **PSL Limited Vs. Commissioner of Customs & Central Excise, Visakhapatnam-I** reported in 2007 (214) ELT 238 wherein taking note of the Board's Circular dated 29.8.2000, the payment of duty on waste and scrap using Cenvat credit stands upheld.

5. Ld. SDR strongly supports the orders of the Commissioner (Appeals). As regards the process of manufacture of exempted medicines, the appellants have made an artificial distinction that part of the granules used was meant for manufacture of waste and scrap of plastics. The entire granules were used only for manufacture of packing containers/bottles for the exempted medicines and the emergence of waste and scrap of plastics cannot alter the said situation. Therefore, the appellants have been rightly denied the credit apply Rule 6(1) of the Cenvat Credit Rules, 2004. He also relies on the decision of the Hon'ble High Court of Bombay in the case of **CCE Vs. Nicholas Piramal (India) Ltd.** reported in 2009 (244) ELT 321 to contend that reversal of proportionate credit attributable to exempted products is not permissible. On the same principle, he claims that the action of the appellants in taking proportionate credit attributable to granules contained in waste and scrap of plastic was not justified.

6. I have carefully considered the submissions from both sides and perused the records.

7. The appellants are manufacturing dutiable medicines as well as exempted medicines. Obviously, these are the main products, as far as the appellants are concerned. By its nature these products, whether dutiable or non-dutiable, cannot be marketed unless they are in the packed condition. The appellants claimed that, in the integrated process, the medicines emerged fully packed in the bottles/containers. The appellants are not intentionally manufacturing waste and scrap of plastics. It is clearly admitted that price per kg. of waste and scrap of plastic is about one eighth of the price per kg of granules. Obviously, the appellants have no intention to exclusively manufacture waste and scrap using costly granules. Having said that, it is not the case that the appellants could have avoided generation of waste and scrap of plastics during the course of manufacture of medicines whether dutiable or exempted. In respect of process of manufacture of dutiable medicines, there is no dispute that the appellants are taking the Cenvat credit on granules and using the same for paying duty on the medicines as well as on the waste and scrap of plastics. The emergence of waste and scrap is inevitable. They are excisable goods and they pay duty and the liability to duty of such waste and scrap is not in dispute. Therefore, the appellants treating the said waste and scrap of plastic arising in the process of manufacture of exempted medicines as final product and paying duty under Chapter Heading 3915 cannot be faulted. The Circular of the Board dated 29.8.2000, though issued in the context of then prevailing rules, is valid even now and once duty is payable on waste and scrap, use of the credit for paying the duty cannot be denied. Therefore, the

orders of the authorities below in holding that the credit attributable to granules in the final products viz. waste and scrap of plastic cannot be allowed cannot be upheld. Having said that, it is noticed from the order of the original authority that the assessee did not submit calculations in support of the credit of Rs.4,84,992/- availed by them pertains to the portion of the plastic granules contained in the waste scrap generated during the period November 2005 to March 2006. The ld. Consultant submitted that if the department was not satisfied with the details furnished by them, it was open to the department to verify the correctness and that they are willing to cooperate with the department by furnishing the relevant details.

8. The decision relied upon by the ld. SDR regarding non-permissibility of adopting proportionate credit may not help their case now, in view of the retrospective Amendment to Rule 6 of the Cenvat Credit Rules 2004 introduced by Section 73 of the Finance Act, 2010 permitting proportionment credit in relation to non-dutiable products.

9. In view of the above, the appeals are disposed of as follows :-

(1) The waste and scrap of plastic has been rightly claimed to be one of the final products by the appellants and duty paid by them.

(2) As the duty liability of waste and scrap of plastic is not in dispute, the appellants are entitled to credit on granules attributable to such waste and scrap of

plastic. The appeals are allowed on merits by setting aside the orders of the authorities below.

(3) The original authority shall verify the correctness of the claim regarding the quantum of credit attributable to such waste and scrap and for this purpose, the matter is remanded to the original authority.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM