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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

Date **11/07/2011**

Appeal No. E/915,931&1132 /2009 - EX[DB] WITH
E/S/885,894 &1112/2009-EX

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

To :
M/S CLASSIC DIALS PVT.LTD.
PLOT NO.367,UDYOG VIHAR, PHASE-II,GURGAON

M/S CLASSIC DIALS PVT.LTD. Appellant
Vs
C.E.E. DELHI III **STAY ORDER NO. 706-708/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.582-584/ 2011 EX[DB]** dated 08-07-11 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult
MR.BHASIN SETHI & ASSICIATE
401,SATYAM CINEMA BUILDING,RANJEET NAGAR,DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file
14. HON'BLE PRESIDENT.
15. M/S. CHINAR PHARMACEUTICALS,
8/15, NEHRU ENCLAVE, N. DELHI-9
16. M/S. DCB FOODS,
KUTANI ROAD, PANIPAT (HAR.)
17. SH. J. P. KAUSHIK, ADV.,
A-14/3, SFS, SAKET, N.DELHI-17
18. CCE, ROHTAK

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision:06.07 .2011

Stay Application No.885 of 2009 in
Central Excise Appeal No.915 of 2009

[Arising out of order in appeal No.24-25/ANS/GGN/2009 dated 23.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s Classic Dials Pvt. Ltd. .... Appellant

Vs.

C.C.& C.Ex.,Delhi III, Gurgaon .... Respondent

Stay Application No.894 of 2009 in
Central Excise Appeal No.931 of 2009

[Arising out of order in appeal No.16/ANS/GGN/2009 dated 22.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s Chinar Pharmaceutical .... Appellant

Vs.

C.C. & C.Ex.,Delhi III, Gurgaon .... Respondent

Stay Application No.1112 of 2009 in
Central Excise Appeal No.1132 of 2009

[Arising out of order in original No.27/ANS/GGN/2009 dated 28.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s DCB Foods .... Appellant

Vs.

C.C. & C.Ex.,Rohtak .... Respondent

Appearance:

Shri V.R. Sethi and Shri J.P. Kaushik, Advocates for the appellants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Technical Member

STAY Oral Order No. 706 - 708/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Since we propose to dispose of the appeals themselves, stay applications are disposed of without insisting for pre-deposit while directing the registry to place the appeals for final hearing forthwith.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing:06.07 .2011

Date of decision: 8.7.2011

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 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

Central Excise Appeal No.915 of 2009

[Arising out of order in appeal No.24-25/ANS/GGN/2009 dated 23.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s Classic Dials Pvt. Ltd. .... Appellant

Vs.

C.C.& C.Ex.,Delhi III, Gurgaon .... Respondent

Central Excise Appeal No.931 of 2009

[Arising out of order in appeal No.16/ANS/GGN/2009 dated 22.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s Chinar Pharmaceutical .... Appellant

Vs.

C.C. & C.Ex.,Delhi III, Gurgaon .... Respondent

Central Excise Appeal No.1132 of 2009

[Arising out of order in original No.27/ANS/GGN/2009 dated 28.01.2009 passed by the Commissioner(Appeals), Central Excise ,Gurgaon.

M/s DCB Foods .... Appellant

Vs.

C.C. & C.Ex.,Rohtak .... Respondent

Appearance:

Shri V.R. Sethi and Shri J.P. Kaushik, Advocates for the appellants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 582-584/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Since a common question of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. In Appeal No.E/915 of 2009, the same arises from order dated 23.1.2009 passed by the Commissioner (Appeals), Gurgaon. By the impugned order while rejecting the appeal filed by the appellants against the order of the adjudicating authority, the penalty was enhanced to Rs.10,000/-. The Assistant Commissioner, Gurgaon by its order dated 28.12.2007 had confirmed the demand of Rs.50,975/- along with interest and had imposed penalty of Rs.2,000/-.

3. In Appeal No.E/931 of 2009, the same arises from the order dated 22.1.2009 passed by the Commissioner (Appeals), Gurgaon. By the said order, the Commissioner (Appeals) dismissed the appeal filed by the appellants against the order of the adjudicating authority. The Additional Commissioner, Gurgaon by his order dated 31.12.2007 had confirmed the duty demand of Rs.24,18,812/- along with interest and penalty of Rs.2,00,000/-.

4. In Appeal No.E/1132 of 2009, the same arises from the order dated 28.1.2009 passed by the Commissioner (Appeals),Gurgaon. By the impugned order, the appeal filed by the Department against the order of the adjudicating authority was allowed and the order of the Assistant Commissioner, Panipat dated 22.11.1007 was set aside. The Assistant Commissioner, Panipat by the said order dated 22.11.2007 had dropped the proceedings initiated against the appellants.

5. In all these appeals, the issue which arises is whether the appellants were entitled for availing exemption under Notification No.8/2003-CE dated 1.3.2003 in respect of certain goods while availing cenvat credit in relation to some other goods.

6. The lower authorities while denying the benefit of the said exemption notification on the ground that the appellants are not entitled for the benefit under said exemption notification and the cenvat credit facility one and at the same time for two different types of products , one which is exempted under the said notification and another which is subject to payment of duty, confirmed the demand to the extent of the goods which were cleared by availing the benefit of SSI exemption. The authorities below also claimed interest on such amount and have also levied penalty.

7. The challenge to the impugned order is on the ground that the branded goods stand excluded from the entitlement of the benefit of SSI exemption in cases where the manufacturer uses the brand name of another person. The exemption benefit under the said SSI notification does not relate to the branded goods when the brand name is of the manufacturer himself. Secondly, there is no bar for availing such benefit when in relation to some other goods the duty is paid.

8. Learned Advocate for the appellants drawing our attention to the decision of the Tribunal in **Cure Quick Remedies P. Ltd. and others vs. C.C.E., Panchkula and Anr**. reported in 2010 (8) RLTONLINE 537 submitted that the issue involved stands settled by the said decision in favour of the assessee. The contention in that regard is not disputed on behalf of the Department. The DR fairly conceded that the issue involved in these matters stands answered by the decision of the Tribunal in Cure Quick Remedies P. Ltd. case.

9. Perusal of the decision of the Tribunal in Cure Quick Remedies P. Ltd. case apparently discloses that the same issue arose for consideration in the sid case and after taking into consideration, the notification in question, it was observed that "Obviously, therefore, the specified goods bearing brand name or

trade name, of another person manufactured by the assessee and cleared on payment of entire duty would not be entitled to claim the benefit under the said notification. The specified goods manufactured simultaneously in the brand name of the assessee himself are not excluded from availing the benefit of exemption under the said notification even though in case of former goods, the assesse seeks to avail the cenvat credit facility in respect of the duty paid on the inputs utilised in the manufacture of the branded specified goods on which the full duty is paid while clearing the same." In that regard, reliance was placed in the matter of C.C.E. vs. Spring Klein Aqua Pvt. Ltd. reported in 2008 (84) RLT 470, Mepro Pharmaceutical P. Ltd. vs. C.C.E.,Rajkot reported in 2009 (91) RLT 557, C.C.E., Coimbatore vs. CRI Pumps (P) Ltd. reported in 2009 (91) RLT 929, Stanlek Engg. Pvt. Ltd. vs. C.C.E., Mumbai II reported in2009 (90) RLT 607 and Nebulae Health Care Ltd. v. C.C., Chennai reported in 2007 (78) RLT 74. The Tribunal in Cure Quick Remedies P. Ltd. has further held that " The exemption envisaged for the specified goods accrues to them through instrumentality of the manufacturer. The notification clearly demarcated the two categories of manufacturers" . While distinguishing the decision in the matter of C.C.E., Ahmedabad vs. Ramesh Food Products reported in 2005 (66) RLT 4 (SC), the Tribunal held that "Taking into consideration the facts of the matter in Ramesh Food Products case and bearing in mind the pre-conditoin for availing the benefit of Notification No.175/86-CE daed 1.3.86, it is abundantly clear that the manufacturer thereunder was given clear option to choose between the two benefits, one under the notification and another under the modvat scheme and not to avail both the benefits simultaneously. That is the case under notification No.8/2003-CE dated 1.3.03. There is no such restriction imposed under the said notification. Rather plain reading of Clause 3, 3A and 4 of the said notification would disclose that the manufacturers are not debarred from availing the benefit under the said notification in relation to the goods other than the goods which are excluded from the benefit of the said notification while simultaneously seeking to avail the benefit of cenvat credit or modvat credit in relation to such excluded goods provided they are cleared on payment of full duty."

10. In view of the said decision in Cure Quick Remedies P. Ltd. which squarely applies to the facts of the case in hand , the impugned orders cannot be sustained and are liable to be set aside and proceedings against the appellants be quashed with consequential relief .

11. The appeals are disposed of accordingly..

(Pronounced in the open Court on 8.7.2011)

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Technical Member

scd/