TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/1456/2005-1457/2005 - EX[DB] Date **24/02/2012**

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

To :
C.C.E JAIPUR-I
N.C.R.B, STATUE CIRCLE, C-SCHEME, JAIPUR
302005

C.C.E JAIPUR-I Appellant

Vs

M/S SMILAX PHARMACEUTICALS Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/212-213/ 2012 EX[DB]** dated 22-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SMILAX PHARMACEUTICALS
11-KM. STONE, TONK ROAD,
SANGANER, JAIPUR
(RAJASTHAN)

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW 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-3
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 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.1456-1457/2005

(Arising out of order in appeal No.443-444/MPM/CE/JPR-1/2004 dated 31.1.2005 passed by the Commissioner of Customs & Central Excise(Appeals), Jaipur)

Date of Hearing: 7.2.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	No.
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Jaipur-I — Appellants

Vs

M/s Smilax Pharmaceuticals — Respondent

Appeared for the Appellant: Shri R.K. Verma, AR
Appeared for the Respondent: Shri Bipin Garg, Advocate

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER No. A/212-213/2012-EX(BR)

Per Mathew John:

The Respondents were manufacturers of Medicaments falling under Heading 30.03 of the Central Excise Tariff and availing exemption for small scale units issued from year to year vide

Notification 8/98 CE dated 02-06-98, 8/99 CE dated 28-02-99 8/2000 dated 01-03-2000, 8/2001 dated 01-03-2001 and 8/2002 dated 01-03-2002. They were also manufacturing medicines under the brand-name of others for which they were paying duty without availing benefit under the above notification.

2. Under the SSI notification exemption ~~is~~ was available for first clearances up to the aggregate value not exceeding Rs. One crore, in a financial year. For calculating this value limit of goods for which exemption could be availed the Respondents were not taking into account the value of goods manufactured by them with brand name of others for which type of goods they were not eligible for the exemption and on which goods they had paid duty.

3. Revenue made out a case that exemption ~~cannot~~ could not be availed on any clearance beyond the value limit of Rs. One crore, even if the first clearances included duty paid clearance. Based on such reasoning Revenue issued two Show cause Notices demanding duty of Rs. 46,88,203 for the period 10/1998 to 03/2003 and for Rs. 16,00,000 for the period 04/2003 to Oct 2003. On adjudication, the demand was confirmed along with appropriate interest. Further penalties equal to the duty amounts were informed under section 11AC of the Act. Aggrieved by the orders the Respondents filed appeal before the Commissioner (Appeal). The Commissioner (Appeal) set aside the adjudication orders relying on the decision of the Tribunal in the case of CCE Vs. K. N. Chari Rubber Plastics-2001 (135) ELT 773 (Tri). Aggrieved by the order of the Commissioner (Appeal), Revenue has filed this appeal.

4. The Ld AR for revenue relies on the decision of the decision of the Tribunal in CCE Vs. Model Bottling Co. Pvt Ltd -1998 (74) ECR 158 (Tribunal) interpreting the provisions of notification 175/86-CE, an earlier SSI Notification, which in turn relied on the decision of Madhya Pradesh High Court in B. K. Rubber Industries (P) Ltd Vs. UOI-1993 (68) E.L.T. 575 (M.P.) dealing with

Notification65/81-CE dated 25-03-81 which was a small scale exemption for tyres.

5. The Counsel for Respondents invites our attention to para 4 of Notification 8/98-CE dated 02-06-98 which explanation was retained in later notifications. The said para 4 reads as under:

> "4. For the purpose of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely :-
>
> (a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason;
>
> **(b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 5 below;**
>
> (c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods. Such clearances of specified goods used as inputs shall be deemed to be exempt from the whole of the duty of excise leviable thereon;
>
> (d) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene."

6. He argues that in notification 175/86-CE dated 01-03-86 there was no provision corresponding to para 4(b) and therefore the interpretation given in respect of Notification No. 175/86-CE or similar notification not having such explanation is not applicable for interpreting provisions of Notification No. 8/98-CE and later notifications having such provision.

7. We have considered arguments on both sides. In fact initially there was no provision in Notification No. 175/86-CE to deny the exemption in the notification to goods manufactured by an SSI unit with the brand name of another. When such provision was introduced by notification 223/87-CE dated 22-9-1987 provisions of the type as in para 4 (b) was not inserted, initially which resulted in the interpretation given in the case of Model Bottling Co

(Supra). We are of the view that the above decisions pointed out by Ld. A. R. for revenue is not applicable in the case of impugned notifications. The decision in the case of K. N. Chari Rubber and Plastics (Supra) is with reference to a period when such explanation was in force.

8. In view of the discussions above we do not find any reason to differ from the decision of the Tribunal in K. N. Chari Rubber and Plastics (Supra) and therefore we reject the appeal filed by Revenue.

(Pronounced in open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*