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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 20/01/2012

Appeal No. E/3419/2010 - EX[DB]
E/S/3212/2010-EX

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

To :
M/S SURYA PHARMACEUTICALS LTD.,
85, HPSIDC, INDUSTRIAL AREA, BADDI, DISTT.
SOLAN (H.P.)
173205

M/S SURYA PHARMACEUTICALS LTD., Appellant

Vs

C.C.E. CHANDIGARH Respondent

STAY ORDER NO. 113/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/36/ 2012 EX[DB]** dated 19-1-12 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19.
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH
COURT No.3

E/Stay/3212/2010 in Appeal No.E/3419/2010

(Arising out of OIO No.102/CE/CHD-I/2010 dt.30.09.10 passed by CCE, Chandigarh)

Date of Hearing/decision: 13.01.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	No
2	Whether it should 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 Departmental authorities?	Yes

M/s.Surya Pharmaceuticals Ltd. Appellants
Vs.

CCE, Chandigarh Respondent

Present for the Appellant: Shri K.K.Anand, Advocate
Present for the Respondent: Shri R.K.Verma, SDR

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

STAY ORDER No. 113/2012-EX (BR)
FINAL **ORDER NO.** A/36/2012-EX (BR)

PER: ARCHANA WADHWA

After hearing both sides, we find that a short issue involved is as to whether the appellant is entitled to the benefit of modvat credit of duty paid on DMO, being used by them as raw material in the manufacture of Menthol. The said DMO was procured from other manufacturers under challan for conversion into Menthol. After receipt of the final product from their job worker, the menthol was exported under bond. It is further seen that a part of DMO procured by the appellant, which was also being cleared by them, on reversal of the credit. The Commissioner vide his impugned order disallowed the credit (inclusive of the amount reversed by them on clearance of DMO) on the ground that since DMO stands used in the manufacture of exempted final product i.e. Menthol which was ultimately exported by the appellant under bond, they are not entitled to credit of duty paid on DMO.

2. We find that the issue is prima facie covered by Hon'ble Bombay High Court in the case of Repro India Ltd. vs. Union of India-2009 (235) ELT 614 (Bom.) as also by Hon'ble Delhi High Court in the case of CCE, Delhi-I vs.Punjab Stainless Steel-2009 (234) ELT 605 (Del.). However, we find that the said two judgements do not stand considered by the adjudicating authority inasmuch as the appellant neither filed reply to the show cause notice nor attended the personal hearing fixed by the adjudicating authority.

3. Learned Advocate appearing for the appellant fairly concedes that no reply ~~could have~~ been filed before the Commissioner and they sought adjournment on first two dates of hearing. As the third notice of hearing was not received by them, the appearance could not be caused. He submits that if the matter is remanded to the adjudicating authority, the appellants would file reply to notice within one month from the receipt of the order. He also undertakes to

cause appearance on personal hearing so fixed by the adjudicating authority.

4. Inasmuch as, we feel that the impugned order stands passed by the Commissioner, by not observing the principles of natural justice as also by not taking into account the precedent decisions of Honb'ble High Courts which prima facie are on the same disputed issue, we set aside the impugned order and remand the matter to the adjudicating authority for de novo consideration. Needless to say that the principles of natural justice would ~~also~~ be observed by the adjudicating authority while passing the order and the appellant would also co-operate in the matter.

5. The stay petition as also the appeal gets disposed in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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