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REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **06/11/2012**

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. **A/1297/2012-EX[DB] dated 23/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of **the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/1993/2005	**C.C.E CHANDIGARH** Central Excise Division, Plot No. 19, Sector 17-C, Chandigarh	**GCM LABS CHANDIGARH** 1057, Industrial Area, Phase-II, Chandigarh

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Copy To
1. Advocate(s) / Consultant(s): SH. J. P. KAUSHIK, ADV, A-14/3, SFS, SAKET, N DELHI-17

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2. Bar Association, CESTAT, Delhi **3.** Director Publications, Customs, Excise. I.P. Estate, Delhi

4. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

5. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

6. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

7. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

8. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

11. C.D.R 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.
Court No.1
Excise Appeal No.1993 Of 2005

(Arising out of Order-in-Appeal No.99-CE/CHD/2005 dated 14.03.2005 passed by the CCE(A), Bhopal)

Date of Hearing/Decision: 23.10.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, 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?	
2	Whether it should be released under Rule 27 of the 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Chandigarh — Appellants

Vs.

M/s.GCM Labs — Respondent

Present: Shri M.S.Negi,DR for the appellant
Present Shri J.P.Kaushik, Advocate for the respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL **ORDER No.** A/ 1237/2012-Ex (BR)

Per: Rakesh Kumar

The Respondent are manufacturers of P & P Medicines of M/s.Soft Pharmaceuticals – Softpar, Bactroril, Sofgesic, Aclosoft, Drosoft, Drosoft, Softcold,Vigor Plus,Sofzyme, Sofcal-500, Bactroril TZ, etc. The medicines were being sold by affixing the logo of M/s.Soft Pharmaceuticals on the wrapper with the name of M/s.Soft Pharmaceuticals as promoters. The Respondent during the period of dispute were availing SSI exemption under Notification No.8/2001 dated 1.2.2001 and were clearing the above mentioned medicines of M/s.Soft Pharmaceuticals affixed with the logo of M/s.Soft Pharmaceuticals by availing SSI exemption. The department was of the view that since the goods were being cleared by affixing the brand name/log of another person, the same would not be eligible to SSI exemption. On this basis, a show cause notice was issued for demand of duty alongwith interest and imposition of penalty. The jurisdictional Assistant Commissioner vide order-in-original dated 22.1.2004 confirmed the duty demand of Rs.1,00,494/- alongwith interest and imposed penalty of equal amount on the respodnent under section 11AC. On appeal to the Commissioner (Appeals), this order of the Assistant Commissioner was set aside vide order in appeal dated 16.3.2005 on merits as well as on issue of limitation. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue.

2. Heard both sides.

3. Shri M.S.Negi, learned DR, assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal and pleaded that the Commissioner (Appeals) has relied upon the judgement of Hon'ble Bombay High Court in the matter of DCI Pharmaceuticals (P) Ltd. vs.CCE-2000 (115) ELT 45 (Bom,), that the ratio of Hon'ble High Court's judgement is not applicable to the facts of this case, that in the case M/s.DCI Pharmaceuticals (P) Ltd. (supra), the brand names affixed on the goods were of the distributors through whom the goods were being sold, while this is not in this case, that in this case the goods were being marketed by the respondent to various persons by affixing logo of M/s.Soft Pharmaceuticals, that in view of this, the impugned order

permitting benefit of SSI exemption to the respondent is not correct, that the respondent suppressed the relevant facts and hence the extended period of limitation under proviso to section 11A(1) is applicable and CCE (Appeals)'s order holding the demand as time barred is not correct and that in view of this, the impugned order is not correct.

4. Shri J.P.Kaushik, Advocate, the learned Counsel for the respondent, pleaded that there is no infirmity in the impugned order. Expanding on the argument learned Counsel submitted that the respondent ~~clear~~ cleared the goods in question, under ~~his~~ their own brand name and not under brand name of M/s.Soft Pharmaceuticals (P) Ltd. Therefore, in terms of Hon'ble Bombay High Court in the matter of DCI Pharmaceuticals (P) Ltd. vs.CCE-2000 (115) ELT 45 (Bom,), they have rightly availed SSI exemption and there is no infirmity in the impugned order. On limitation, learned Counsel submitted that the returns were being filed with the department from time to time, therefore, it cannot be said that the respondent practiced fraud by concealment of facts with a view to evade excise duty. As such, the Commissioner (Appeals) has rightly concluded that the show cause notice was barred by limitation. In the alternative, it was contended that if the respondent's plea is not accepted, even then hundred percent penalty on the respondent is not sustainable in view of the judgment of Hon'ble High Court of Delhi in the case of K.P.Pauches (P) Ltd. vs. Union of India-2008 (85) RLT 483 (Del.), as the entire disputed amount of duty had been paid much before the adjudication but still the order in original passed by the Assistant Commissioner did not give an option to the respondent to pay lower penalty of 25% of the duty demand in terms of proviso to section 11AC.

5. We have considered the submissions made from both sides. As regards, question of eligibility of SSI exemption, we find that during investigation, Sanjeev Aggarwal, proprietor of the respondent firm was examined under section 14 of Central Excise Act, 1944 wherein he admitted that they are manufacturing goods on behalf of M/s.Soft Pharmaceutical, Chandigarh under their brand name Sofpar, Bactroril, Bactroril TZ, Sofgesic, Aclosoft, Drosoft, Sofdase, Softcold, Vigor Plus, Sofzyme, Amrox GT, Bactoril, Sofcal-500 mg belonging to M/s. M/s.Soft Pharmaceutical, Chandigarh. He further deposed that they are clearing the goods bearing above proprietary name to M/s.Soft Pharmaceutical, Chandigarh and in addition they are also making sale of these goods to many other parties; that the goods supplied to these parties were bearing the above said brand names and logos of M/s.Soft Pharmaceutical, Chandigarh; that for packing of medicines manufactured on behalf of the said firm, entire raw material was purchased by them and payments of such purchases were made by them directly; that the wrappers used for packing of the medicines were also got printed by them; that M/s.Soft Pharmaceutical were not supplying any kind of raw material for the manufacture of and wrapping of finished goods.

6. From the records, it appears that on 19.3.2004, Shri Sanjeev Agarwal changed his stand and submitted that actually the goods were sold under his brand name and not of M/s.Soft Pharmaceutical, Chandigarh and they are not paying any royalty to the said firm. The second statement of the respondent appears to be an afterthought, particularly, for the reason that the respondent

have not led any evidence which will indicate that the goods, in question, were not sold under the brand of M/s.Soft Pharmaceutical or M/s.Soft Pharmaceutical were promoter of said the product. In support of his contention, learned Counsel for the respondent had today produced packing box of one of the product 'Vigor Plus'. On perusal of this packing, we find that this bears logo of Soft Pharmaceutical. Therefore, it is apparent that the Respondent were clearing the goods under the brand name of M/s.Soft Pharmaceutical. Though the name of M/s.Soft Pharmaceutical has been shown as promoter but they cannot be termed as distributor of goods for the reason that the Respondent had been selling the goods under the brand name of another person.

7. In view of the above, the Respondent were clearing the goods under the brand name other person as such, they were not entitled to benefit of SSI exemption of Notification No.8/2001. The judgement of Hon'ble Bombay High Court relied upon by the Respondent is not applicable to the facts of this case for the reason that the goods manufactured by them were not being distributed by some other company. In the instant case, M/s.Soft Pharmaceutical, Chandigarh has only been described as promoter and there is no evidence to show that they were distributors of the goods. On the other hand, there is admission on the part of the proprietor of the respondent company that the respondent was selling the goods to other persons also. As regards question of limitation, we find that the respondent had never disclosed that they were clearing the goods affixed with the brand name of another person and hence we are of the view that the extended period under provision to section 11A(1) would be available to the

department and for the same reason penalty under section 11AC would also be imposable. However, since in this case, the entire demand of duty had been paid by the respondent prior to issue of show cause notice and still in the order-in-original passed by the Assistant Commissioner no option had been given to pay lower penalty in terms of proviso to section 11AC, the ratio of the Hon'ble Delhi High Court's judgement in the case of K.P.Pauches (P) Ltd. (supra) would be applicable. Accordingly, the appeal is accepted. The impugned order is set aside and the order in original passed by the original adjudicating authority is restored except for modification that the penalty imposed on the Respondent is reduced to 25% of the duty demand.

(Justice Ajit Bharihoke)

President

(Rakesh Kumar)
Member (Technical)

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