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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

Appeal No. E/2998/2011-3003/2011 - EX[DB]
E/S/3856-3861/2011-EX

Date **19/06/2012**

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

To :
M/S SUN PHARMACEUTICAL INDUSTRIES
6-9 EPIP, KARTHOLI, BARI BRAHMANA, JAMMU.

M/S SUN PHARMACEUTICAL INDUSTRIES Appellant

Vs

C.E. JAMMU Respondent

STAY ORDER NO. 931-936/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/692-697 2012 **EX[DB]** dated 13-6-12 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. JAMMU
OB-32, RAIL HEAD COMPLEX,
JAMMU - 180012.

2. Adv. / Consult SH. KIRAN SAWLE, ADV. C/F
MR.A.B.NAWAL&ASSOCIATES,
14-17 SUYASH COMMERCIAL MALL, NEAR PAN CARD CLUB, S.NO 74&75,
BANER,PUNE-45

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 Registra
(Excise Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 13/06/2012.

Excise Stay Application No. 3856-3861 of 2011 in Appeal No. 2998-3003 of 2011

[Arising out of the Order-in-Appeal No. 225-230/CE/Appl/Chd-II (JK)/2011 dated 29/09/2011 passed by The Commissioner (Appeals – II), Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities? :

M/s Sun Pharmaceutical Industries — Appellant

Versus

CCE, Jammu — Respondent

Appearance

Shri Kiran Sawle, Advocate – for the Appellant.

Shri Nagesh Pathak, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 931-936/2012-EX(BR)
FINAL Order No. A/692-697/2012-EX(BR)

Shri Justice Ajit Bharihoke :-

By this order, we propose to dispose of above referred appeals involving common parties and common question of law and fact.

2. These appeals are directed against the order of Commissioner (Appeals) vide which he rejected the appeals filed by the appellant against the respective orders-in-original vide which the Jurisdictional Assistant Commissioner disallowed the Cenvat credit wrongly availed by the appellant in respect of the education cess as also the H&S education cess. The appeals were rejected/dismissed by the Commissioner (Appeals) on account of failure of the appellant to pre-deposit the amount of the self-credit erroneously taken in respect of the duty paid against Cenvat credit account.

3. After some arguments learned counsel for the appellant on instructions from the parties has submitted that the appellant is ready and willing to deposit the amount of Cenvat Credit, held to be wrongly taken, without prejudice to his rights and pleas. Appellants undertaken to deposit paid amount relating to respective appeals within two weeks and urge us to set aside the impugned orders and remand the mater back to Commissioner (Appeals) for hearing the appeals on merits.

4. Learned Shri Nagesh Pathak, DR for the Department have fairly conceded, if the appellants are ready and willing to complying with the condition of pre-deposit as directed by Commissioner (Appeals), the department has no objection if the order of Commissioner (Appeals) is set aside and matter is remanded back for hearing the appeals on merits.

5. In view of the undertaking given by the Counsel for the appellants as also concession given at the bar by Shri Nagesh Pathak, we allow the appeals subject to the appellant making pre-deposit in terms of the order of Commissioner (Appeals) within a period of two weeks. In the event of the appellants complying with the aforesaid undertaking, the appeals shall be treated as set aside and Commissioner (Appeals) shall decide the appeals on merits after giving opportunity of being heard to the appellants. We make it clear that in the event of appellant failing to make pre-deposit, these appeals shall be treated as dismissed.

Appeals are disposed of on aforesaid terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK