CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 54060 of 2018

[Arising out of Order-in-Appeal No. 402-404(SM)CE/JPR/2018 dated 24.09.2018 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Vinayak Manutrade (P) Ltd. **...Appellant**
31, Jhotwara Industrial Aream
Jaiupr - 302010

VERSUS

Commissioner of CGST & Central Excise – Jaipur **...Respondent**
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur

WITH

Excise Appeal No. 54061 of 2018

[Arising out of Order-in-Appeal No. 402-404(SM)CE/JPR/2018 dated 24.09.2018 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

Shri Chandra Prakash Bansal **...Appellant**
31, Jhotwara Industrial Aream
Jaiupr - 302010

VERSUS

Commissioner of CGST & Central Excise – Jaipur **...Respondent**
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur

WITH

Excise Appeal No. 54062 of 2018

[Arising out of Order-in-Appeal No. 402-404(SM)CE/JPR/2018 dated 24.09.2018 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Vinayak Manutrade (P) Ltd. **...Appellant**
31, Jhotwara Industrial Aream
Jaiupr - 302010

VERSUS

Commissioner of CGST & Central Excise – Jaipur **...Respondent**
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur

<u>AND</u>

Excise Appeal No. 52477 of 2023

[Arising out of Order-in-Appeal No. 19(SM)CE/JPR/2021 dated 05.02.2021 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Vinayak Manutrade (P) Ltd. **...Appellant**
31, Jhotwara Industrial Aream
Jaiupr - 302010

VERSUS

Commissioner of CGST & Central Excise – Jaipur **...Respondent**
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur

<u>APPEARANCE:</u>
Shri Madhu Sudan Sharma, Consultant for the Appellant
Shri S.K. Ray, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 26.02.2026
DATE OF DECISION: **<u>05.06.2026</u>**

FINAL ORDER NO. <u>51089-51092/2026</u>

<u>DR. RACHNA GUPTA</u>

Present order disposes of 4 appeals involving the identical issue. The details of the appeals are as follows:

Appeal No.	Show Cause Notice	Amount of Demand confirmed	OIO	OIA
E/54060/2018	30/77/2015/2617	Rs.1,65,99,598/- + Penalty Rs. 1,65,99,698/- under Section 11AC + Confiscation of goods Rs. 5,76,543/- with R.F. of Rs. 50,000/-	05/2017-1 dated 05.06.2017	402-404/2018 dated 24.09.2018
E/54061/2018	30/77/2015/5619 dated	Rs.50,000/-	05/2017-18 dated	402-404/2018

	22.07.2015		05.06.2017	dated 24.09.2018
E/54062/2018	30/115/2016/5309 dated 28.02.2017	Duty of Rs.1,05,57,039/- + Penalty of Rs. 10,55,704/- under Section 11AC(1)(a) of Central Excise Act, 1944	11/2017-18 dated 18.08.2017	402-404/2018 dated 24.09.2018
E/52477/2023	187/2018 dated 21.12.2018	Duty of Rs. 33,55,530/- + Penalty of Rs.3,34,572/- under Section 11AC(1)(a) under Central Excise Act, 1994	16/2019-20 dated 15.10.2019	19/2021 dated 05.02.2021

1.1 The facts in brief relevant for the purpose are that the appellant M/s. Vinayak Manutrades Pvt. Ltd., the appellant herein, is engaged in manufacture of various excisable goods like mineral water, Phenyl (Slack Disinfectant Fluid), Absorbent Cotton Wool, Cotton Bandage, De-ionized Water and Sodium Hypochloride; and in repacking of various Pharmaceutical (IP) products from bulk packs to retails packs. The appellant in Appeal No. E/54061/2018 namely, Shri Chandra Prakash Bansal is the Director of appellant. During the search by the Anti Evasion Branch Officers on 23/24.01.2015, it was noticed that the appellant had evaded central excise duty, as mentioned above, during the period 01.12.2010 to 23.01.2015 by way of clandestine clearance of excisable goods without taking registration, rather availing SSI exemption erroneously in contravention of Central Excise Rules, 2002.

1.2 With these observations, the above mentioned show cause notices were issued to the appellants while invoking the extended period of limitation, proposing the demand of recovery of Central Excise Duty as mentioned in the table above along with the proportionate interest at appropriate rates and proportionate penalties. The recovered and seized goods were proposed to be confiscated. The said proposal was initially confirmed vide Orders-in-Original as mentioned in table above, however to the extent of confirming such demand of central excise duty as mentioned above, being short paid duty on Pharmaceutical (IP) products, on absorbent cotton wool and on cotton bandage by way of misclassifying and wrongly availing the exemption as alleged. The appeals against the said order have been rejected vide the Orders-in-Appeal in the respective appeals as mentioned in the table above. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Madhu Sudan Sharma, learned Consultant for the appellant and Shri S.K. Ray, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the issue with respect to the excise duty/vis-à-vis absorbent cotton wool and its classification is no more res integra. It has already been decided by this Tribunal, Allahabad Bench vide Final order No. 70546-70551/2017 dated 15.05.2017 which was later reaffirmed by Allahabad Bench itself in the case of Commissioner of **Central Excise, Kanpur Vs. M/s. Shanti Surgical (P) Ltd. vide Final Order No. 71026/2018 dated 08.05.2018.** Based on the said

decision, the allegations of mis-declaring absorbent cotton wool and demanding excise duty on the said product are prayed to be set aside. Since two show cause notices have raised demand only on this point, the said show cause notices and the consequent adjudication orders are liable to be set aside.

3.1 While submitting about demand of excise duty confirmed on repacking of medicines by the appellant, it is submitted that the medicines manufactured by the appellant are covered under Entry No. 30 of Notification No. 1/2011-CE dated 01.03.2011 and accordingly from 17.03.2011 the duty only at the rate of 2% in terms of Notification No. 16/2012 dated 17.03.2012 is applicable. The department has wrongly confirmed the demand based on the wrong findings that the allopathic medicines are not mentioned in the said notification. Learned counsel has impressed upon that the Entry has used the word 'including' which means that it is all type of medicaments including those which are specifically mentioned in the entry. The appellant products/the allopathic medicines fall under the category of medicaments. The another condition of exemption has also been complied with by the appellant. Hence duty on repacking of medicines is wrongly confirmed. The order to that extent is also liable to be set aside.

3.2 While submitting about duty on other products like phenyl, mineral water, De-ionized Water etc., the appellant has accepted the duty liability on the products. While challenging the confiscation of goods valuing to Rs.5,75,543/-, it is mentioned that the appellant was under bona fide belief of the goods manufactured by them are exempted. Hence, there was no reason to order confiscation of the seized goods. For the same reason, the penalty on the Director, the co-appellant, namely Shri Chandra Prakash Bansal is also liable to be set aside. With these submissions, the appeals are prayed to be disposed of accordingly.

4. While rebutting these submissions, learned Departmental Representative appearing for the department has submitted that during the search of the premises of M/s. Vinayak Manutrade (P) Ltd., substantial stocks of absorbent cotton wool, gauze and bandages packed in consumer sizes were seized. All these products bore Drug License No. RAJ-1851 issued under Drugs & Cosmetics Act. The products were found to have been manufactured as per Schedule F (II) of the said Act – governing standards for surgical dressings. The packages were found contained date of manufacture, expiry date and MRP which clarified that those were meant for retail sale and patient consumption. The packaging in the packets of 15 grams, 20 grams, 50 grams, up to 1 kg also clarifies that the products were meant as end use for hospitals, pharmacies and patients. All those observations were clearly admitted by the Director/the co-appellant namely Shri Chandra Prakash Bansal in his statement dated 10.07.2015. It was also admitted that appellants did not get the registration with the Central Excise department nor ever paid the Central Excise Duty.

4.1 It is submitted that in light of the above admissions, the product of the appellant is not simply absorbent cotton wool of CTH 5601 (wadding of textile materials and articles thereof). It is clearly the product under CTH 3005 (Wadding, gauze, bandages, and similar articles).

4.2 While submitting about dutiability of generic allopathic medicines, it is mentioned that the benefit of Notification No. 1/2011 dated 01.03.2011 has wrongly been claimed by the appellant. The said exemption is available to some specified medicaments manufactured from Ayurvedic or Siddha or Unani Tibbi Systems or Homeopathic Pharmacopoeia. The appellants are manufacturing generic allopathic medicines which are out of the scope of the said notification. The demand has rightly been confirmed.

4.3 Finally rebutting the submissions about invocation of extended period of limitation, it is mentioned that the appellant had clear knowledge of excise liability vis-à-vis the products manufactured by them. They had obtained the drug licenses for manufacturing surgical dressings under Drug Schedule F (II). However, they concealed this activity from the authorities. The appellants had otherwise voluntarily deposit of Rs. 50 lakhs after the raid. To support his submissions, learned Departmental Representative has relied upon the following decisions:

(i) Ramaraju Surgical Cotton Mills Vs. Collector of Central Excise, Madurai reported as 1996 (82) ELT 86 (Tribunal)

(ii) Medtek Asia Pvt. Ltd. Vs. Commissioner of Central Excise, Mysore reported as 2018 (9) GSTL 288 (Tri.-Bang.)

(iii) Commissioner of Central Excise, Mumbai Vs. Kalvert Foods India Pvt. Ltd. reported as 2011 (270) ELT 643 (SC)

(iv) Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported as 2018 (361) ELT 511 (SC)

(v) Tejas Networks India Ltd. Vs. Commissioner of Central Excise (Service Tax), Pondicherry reported as 2014 (302) ELGT 80 (Tri.-Chennai)

With these submissions, 4 of the appeals are prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, it is observed that following three issues need to be adjudicated all the 4 appeals:

(i) Whether the absorbent cotton wool and bandages are classifiable under Chapter 560110 as declared by the appellant or the products merits classifications under CTH 30059010 as alleged by the department.

(ii) Whether the medicines manufactured by the appellant are covered under Entry of Sr. No. 37 of Notification 1/2011-CE dated 01.03.2011.

(iii) Whether there is suppression of material facts on part of the appellant with an intent to evade the payment so as to justified the invocation of extended period of limitation.

6. **Issue No. 1**

6.1 To adjudicate the issue foremost the rival chapter headings are being perused. For appreciation of facts and ready references the relevant portion of the Tariff in respect of Chapters 30, 52 & 56 are being reproduced below:

3005		Wadding, Gauze,Bandages & similar articles (for example- dressings,adhesive, plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical,dentalor veterinary purposes	Unit	Rate of Duty
300510		-Adhesivedressingsand other articles having an adhesivelayer		
	30051010	--AdhesiveGauze	Kg	16%
	30051020	--AdhesiveTape	Kg	16%
	30051090	--Other	Kg	16%
300590		-Other:		
	30099010	---CottonWool,Medicated	Kg	16%
	30059020	---PouliticeofKaolin	Kg	16%

Tariff Item	Description of goods	Unit	Rate of Duty
5601	Wadding of textile materials and articles thereof, textile fibres, not exceeding 5mm in length (flock), textile dust and mill nepts wadding of textile materials and articles thereof:		
560121	Of cotton;		
56012110	Absorbent Cotton Wool	Kg.	12.5%
56012190	Other	Kg.	12.5%
56012200	Of man-made fibres	Kg.	12.5%
56012900	Other	Kg.	12.5%
56013000	Textile flock and	Kg.	12.5%

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Though the appellant has taken the plea that the specific entry must take precedence over the general entry and as per specific entry, appellant's product i.e. absorbent cotton wool is under 5601. But from the table given above, it is clear that what is covered under Chapter 56 are clearly products of textile material and articles thereof i.e. wadding of textile materials. If textile being cotton than absorbent cotton wool is under CTH 5601.

6.2 On the other hand, the products under Chapter 30 are the products used in dressings etc. for medical, surgical, dental or veterinary purposes. These products includes wadding, gauze, bandages and even medicated cotton wool.

6.3 The appellant in the present case as per the statement of appellant's Director Shri Chandra Prakash Bansal is engaged in manufacturing absorbent cotton wool along with the surgical gauze/bandages to be used for the surgical etc. purposes. There is clear admission that the product is manufactured under drug license for medical use and are supplied to the government and private hospitals. The said statement of Director has never been retracted. The admissions are the best evidences. This admission which otherwise corroborates the drug license makes it clear that the product of appellant is for medical purposes which are covered under Chapter 30 (3005). Though Chapter 56 (5601) specifically mentions absorbent cotton wool but the chapter covers the textile articles. The admission of the appellant makes it clear that the specific entry for the product manufactured by them is the one which is covered under Chapter 30.

The Tariff Heading with respect to CTH 3005 further clarifies as follows:

> *CETH 3005: Wadding, gauze, bandages, and similar articles (dressings, adhesive plaster, poultices), either:*
>
> *(i) Impregnated/coated with pharmaceuticals, or*
>
> *(ii) Put up in retail packings for medical, surgical, dental, or veterinary purposes.*
>
> *- Even if not impregnated with drugs, once goods are packed and meant for surgical/medical use in retail sale, they fall under CETH 3005.*

Since the appellant product admittedly is manufactured as per drug Schedule F(II), it is clear that the product prescribes the standard for surgical dressings and any such product manufactured for surgical/pharmaceutical purposes, the product has no place under Chapter 56. The Chapter note 2 of Section (vi) clarifies that the goods classifiable in Heading 3005 by reason of being put up in retail packings cannot be classified elsewhere. Further Chapter note 1(e) of Section XI excludes articles of Heading 3005 from Chapter 56 and other textile headings. These 2 notes supports the observations that the absorbent cotton wool manufactured by the appellant being meant for medical surgical purposes, irrespective it is impregnated or not with drugs. The absorbent cotton wool should be cotton wool of CTH 3005. We draw our support from the decision of this Tribunal in the case of **Ramaraju Surgical Cotton Mills (supra)**. The appellants have relied upon **Shanti Surgical Pvt. Ltd. (supra)** but the product in that case was non-medical cotton/absorbent cotton wool. In totality of the entire above discussion, it is held that the absorbent cotton wool was wrongly classified by the appellant under 5601. It is rightly classifiable under CTH 3005 as claimed by the department which attracts Central Excise Duty. Hence, this issue stands decided in favour of the department.

7. **Issue No.2**

7.1 Foremost, we have perused the Notification No. 1/2011. It reads as follows:

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of the excisable goods
37	30	Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia.

7.2 For the medicaments as mentioned above, the exempted rate of duty was fixed at the rate of 2% in terms of amending Notification No. 16/2012 dated 17.03.2012. The bare perusal reveals that the entry covers all medicaments which also includes the medicaments used in Ayurvedic or Siddha or Unani Tibbi Systems or Homeopathic products. The benefit is denied to the appellant alleging that the allopathic medicines manufactured by the appellant are not mentioned under the said entry. However, the entry gives an unambiguous meaning that all kinds of medicaments are covered under the said entry. The use of word 'including' is merely a clarification to extend the scope of word 'medicaments'. In the light of this clear interpretation, we hold that the allopathic medicines are also covered under the term 'medicaments'.

7.3 It is also observed that the another conditions of availing the benfit of Entry 37 of Notification No.1/2017 have also been fulfilled by the appellants i.e., the appellant is selling their medicines under their generic name as per the Pharmacopoeia names mentioned in the said entry and that the appellant has not availed the Cenvat credit. Department has not produced any other document to falsify the above compliances on part of the appellant. Appellant is therefore held entitled for benefit of this notification. Hence the demand confirmed denying the benefit of exempted rate of duty is liable to be set aside. This issue stands decided in favour of the appellant and against the department.

8. **Issue No. 3**

8.1 The appellants were manufacturing their product to be supplied only to the hospitals, for being used as surgical dressings and being manufactured under drug license. They were also printing the batch numbers, expiry dates and MRPs of small retail packs as is required under the said schedule. Thus they were well aware of their excise liability vis-à-vis said product. However all the said activities were concealed by them from the department which could be unearthed only at the time of raid wherein large quantities of the manufactured products ready for clearance without duty payment were recovered from the appellants premises. The appellant had recognized/admitted their act as an act of clandestine removal and evasion. Accepting it to not to be a bona fide error that payment of Rs. 50 lakhs, post raid was made by the in their premises. The Hon'ble Apex Court in **Kalvert Foods India Pvt. Ltd. (supra)** has already held that the voluntary payment of duty after departmental detection constitutes strong evidence of suppression and corroborates clandestine removal or evasion of duty. We hold that the act and conduct of the appellant is such that department has rightly invoked proviso to Section 73 of the Finance Act, 1994 thereby invoking extended period of limitation. Accordingly, This issue also stands decided in favour of the department and against the appellant.

With respect the duty of other products like Phenyl, mineral water and De-ionized Water, the liability has already been accepted by the appellant. The order under challenge to that extent is also sustainable.

9. In view of the entire above discussion, we do not find infirmity in the findings of the impugned orders while confirming Central Excise Duty on Absorbent Cotton Wool (IP) and Cotton Bandage (Surgical Dressing) along with proportionate interest and penalty is hence the same is hereby confirmed for four of the appeals. However, the part of the orders denying the benefit of Notification No. 16/2012-CE dated 17.03.2012 in all these appeals is held wrong. Hence, the demand confirmed on this count is hereby set aside. All four show cause notices are held to have rightly invoked the extended period of limitation. As a result of said conclusion, the orders under challenge in four of the appeals stands modified and four of the appeals are partly allowed.

[Order pronounced in the open court on **05.06.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

HK