



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20221264SW000000EE70

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/145/2022-APPEAL / 5682-82
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-069/2022-23 and 30.11.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.12.2022
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-MT-019-21-22 dated 13.01.2022 passed by the Joint Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vimson Derma, F/5, Ayodhya Nagar Society, Opp. Shahjivan Society, Shantinagar, Usmanpura, Ahmedabad- 380013

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

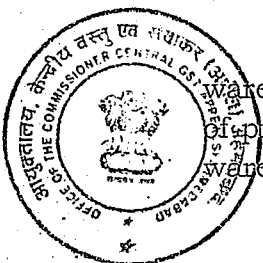
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

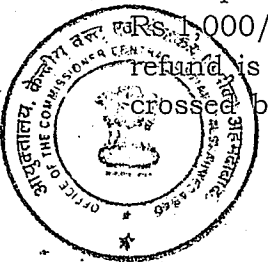
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

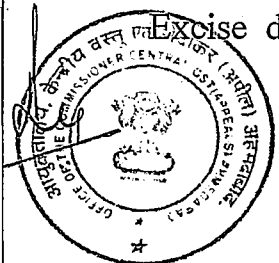
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



अपीलियआदेश ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Vimson Derma, 816/3, Kothari Industrial Estate, Opposite: Khodal Lodge, Santej, Kalol - 382721 (Communication address at F/5, Ayodhya Nagar Society, Opposite Sahjivan Society, Shantinagar, Usman Pura, Ahmedabad - 380013) [hereinafter referred to as "the appellant"] against Order-in-Original No. AHM-CEX-003-JC-MT-019-21-22 dated 13.01.2022 [hereinafter referred to as "the impugned order"] passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant was engaged in manufacturing of Medicated Toilet Soaps falling under CETH No. 34011110 of the Central Excise Tariff Act, 1985 (in short CETA, 1985) and were holding Central Excise Registration No. AAMFV0370QEM001. They have not obtained service tax registration. During the course of audit of the records of the appellant by the Officers of Central Tax Audit Commissionerate, Ahmedabad, it was observed that during the period April-2015 to June-2017, the appellant had manufactured and cleared 'Medicated Soaps' classifying under CETH 34011110 on payment Central Excise duty @ 6% ad-valorem, without claiming any exemption. On scrutiny of their ER-1/ER-3 returns, it was found that they had declared their product as 'Medicated Soap' and classified them under CETH-34011110. They had also discharged the Central Excise duty liability on value based assessment under MRP based valuation claiming abatement @ 35% and paid Central Excise duty @ 6% ad-valorem. In some of the returns, they had claimed exemption under Sr. No. 1 of Notification No. 12/2012-CE dated 17.03.2012. These facts/figures of ER-1 returns were corroborated with sample Sale Invoices. It appeared that the appellants had cleared 'Medicated Soap' by wrongly availing the benefit of 35% adv and by wrongly paying Central Excise duty @ 6% adv. The Audit officers were of the view that the 'Medicated soaps' manufactured by the appellant are correctly classifiable under CETH No. 34011110 and are liable to duty @ 12.5 % ad-valorem in terms of CETA, 1985 and in terms of Notification No. 49/2008-CE (NT) dated 24.12.2008, the applicable abatement is 30%. Consequently, the appellants were issued Final Audit Report No. CX/ST-527/2020-21 on 11/12/2020 (FAR) wherein they were requested to pay short paid Central Excise duty amounting to Rs. 1,13,79,414/- alongwith interest. The FAR also

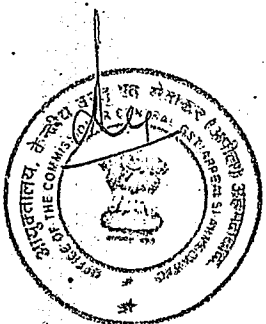


pointed out short payment of Service Tax on GTA service amounting Rs. 21,995/- and non-payment of penalties for not obtaining registration under Service Tax and non-filing of Service Tax returns respectively.

2.1 The appellants replied to the FAR vide letter dated 20.12.2020 wherein they admitted to the liability of Service Tax on GTA service as well as their mistake for not obtaining Service Tax Registration. However, they contested the demand of Central Excise duty informing that their Product – ‘Medicated Soap’ is primarily used as a medicament for prophylactic or therapeutic usage and not as a toilet soap, therefore, the same is not to be classified under CETH-34011110. They also requested to drop the said Audit Para and accept their valuation @ 35% abatement and payment of duty @ 6% ad-valorem. They also relied upon the judgement of the *Hon'ble Supreme Court of India in the case of CCE, Hyderabad Vs. Sarvotham Care Limited*. They also requested for deletion of penalty on non-filing / late filing of ST-3 returns.

2.2 The contentions of the appellant was not accepted and a Show Cause Notice dated 29.12.2020 was issued vide e-File No. GADT/Tech/SCN/CE/19/2020-Tech and Legal (in short SCN) proposing to demand the Central Excise duty amounting to Rs. 1,13,79,414/- under Section 11A(4) of the Central Excise Act, 1944 (CEA, 1944) by invoking extended period of limitation alongwith Interest under provisions of Section 11AA of CEA, 1944. The SCN also proposed imposition of penalties under the provisions of Section 11 AC (1) (c) of CEA,1944 and under Rule-25 of the Central Excise Rules, 2002 (CER,2002). The SCN also proposed recovery of Service Tax amount of Rs. 21,995/- under Section 73(1) of the Finance Act, 1994 (F.A, 1994) alongwith interest under Section 75 of F.A, 1994 and imposition of penalties under Section 78 of the FA, 1994, Section 77(1)(a) of FA, 1994 [for failure to obtain registration under the Act] and under Section 70 of the FA, 1994 read with Rule 7C of the Service Tax Rules [for failure to file the correct ST-3 Returns].

3. The SCN was adjudicated by the adjudicating authority vide the impugned order vide which demands, interest and penalties were confirmed as detailed in the table below:



Table

Type of Demand	Section of CETA, 1944 and/or FA,1994	Amount (Rs.)
Central Excise duty	Section 11 A(4) of the Central Excise Act, 1944	1,13,79,414/-
Interest	Section 11AA of the Central Excise Act, 1944	Not calculated
Penalty	Section 11 AC(1)(c) of the Central Excise Act, 1944	1,13,79,414/-
Service tax	Section 73(1) of the Finance Act,1994	21,995/-
Interest	Section 75 of the Finance Act,1994	Not calculated
Penalty	Section 78(1) of the Finance Act,1994	21,995/-
Penalty	Section 77(1)(a) of the Finance Act,1994	10,000/-
Penalty	Section 70 of the Finance Act,1994 read with Rule 7C of the Service Tax Rules	Not ascertained.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on following grounds:

- (i) The adjudicating authority has failed to consider that the essential properties of the product manufactured by the appellant is of medicinal nature and hence should be classified under CETH-3004 9029 and not 3401 1110. They relied on the Judgement of the Hon'ble Supreme Court of India in the case of Commr. of Central Excise Vs. Wockhardt Life Sciences, emphasizing on para-15 and 17 of the said decision.
- (ii) The adjudicating authority has erred in law by applying Rule 3(a) instead of Rule 3(b) of Central Excise Tariff Classification Rules, since predominant use of the product under dispute is of medicament for therapeutic or prophylactic uses. They relied upon the decision of the Apex Court in case of Commr. of Central Excise, Hyderabad Vs. Sarvottam Care Limited.
- (iii) The adjudicating authority has wrongly levied duty @ 12.5 % advalorem allowing 30% abatement whereas it should have been levied @ 6% after allowing 35% abatement.
- (iv) Adjudicating authority has wrongly invoked extended period of limitation as there was no reason of fraud or collusion or any willful misstatement or suppression of facts, since all the details were declared by the appellant in their ER-1/ER-3 returns. The disputed amount of demand is only due to classification of the product.

5. Personal Hearing in the case was held on 31.10.2022. Mr. Vijay N. Thakkar, Authorised Representative, appeared for hearing on behalf of the appellant. He re-



iterated submissions made in the appeal memorandum. He submitted additional written submissions dated 30.10.2022 and 31.10.2022 during the hearing and re-iterated submissions made therein.

5.1 In the additional written submissions dated 30.10.2022 and 31.10.2022, the authorized representative of the appellant submitted that:

(i) The case is of dispute with respect to classification of their product 'Medicated Soap', which contains two active ingredients namely 'Ketoconazole IP 1.00% to 2% w/w' and 'Cetrimide 0.5% w/w' having therapeutic and prophylactic value. The compositions of these ingredients in the product are based on TDD system for curing fungal infections of the skin and hence classifiable under CETH 30 and accordingly they have discharged the duty liability after 35% abatement.

(ii) They had submitted during the course of personal hearing before the adjudicating authority on 17.12.2020 the following points:

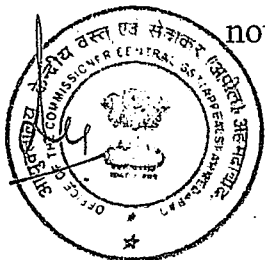
- Their product – 'Medicated Soap' consisted of 'Ketoconazole IP 1.00% to 2% w/w' and 'Cetrimide 0.5% w/w' in measured doses to prevent fungal diseases and are classifiable under CETH 30044929 of the first schedule of CETA, 1985.
- they were manufacturing the product on behalf of several companies and the product was being sold with the help of Chemists as medicine to cure fungal diseases and labels and literature of the product were also supportive of the same.
- Normally the product is sold under prescription of a doctor and not as a soap.
- It is not used to clean the skin. Inviting attention to Chapter Note 1 (f) of Chapter 30 and inviting attention to CETH 3401 and 3004 read with Rule of Interpretation and definition of Toilet preparations and Medicinal and Toilet preparations Act, 1955, the product should be classified under CETH 3004.
- In their ER-1 and Invoices, they have wrongly mentioned the CETH as 34011110, but this does not change the nature of the product.

(iii) During their second hearing on 21.12.2020, they further submitted to the adjudicating authority that during the period they were manufacturing



as product under the brand name 'Acvaketo Soap' on behalf of a company and they were holding licence in Form 25 issued by the FDA, Gujarat and the FDA has confirmed the ingredients of the said soap. They also cited the decision of M/s Sarvotham Care Limited Vs Commr. of Central Excise.

- (iv) They further, elaborated the utility of the ingredients and also the TDD in support of their contention. They also emphasized on the soap wrappers and various inscriptions on them.
- (v) Regarding the exclusion clause i.e. Chapter Note 1(f) of Chapter 30, they contended that the said clause was enacted on 28.02.2005 vide Notification No.6/2005-CE(NT) dated 24.02.2005 and since their product falls under the category of medicament containing medicines in measured doses should be classified under CETH 3004 and not CETH 3401. In support of their argument they referred to the decision of the Hon'ble CESTAT in the case of Wockhardt Life Sciences Vs Commr. of Central Excise, Aurangabad reported at 2003(156)ELT736(Tri-Mumbai).
- (iv) As the adjudicating authority had held that the issue being of Classification of goods would not be governed vide Rule 3(a), hence they contend that Rule 3(b) should be applied as the product has prophylactic or therapeutic use hence in terms of the order of the Apex Court in the case of Commr. of Central Excise, Vs Wockhardt Life Sciences reported at 2012 (277) ELT 299 (S.C.). Classification should be based on the utilization of the product and not as per the basic guidelines of the Tariff/HSN.
- (v) They also contended that the order of the Apex court in the case of VVF Ltd. Vs Commissioner of Central Excise, Surat-II reported at 2016 (334) ELT 579 (SC) relied upon by the Adjudicating authority is not relevant to the facts and circumstances of the present case.
- (vi) Various citations relied by the appellant were not distinguished by the adjudicating authority. They have correctly classified their 'Medicated Soap' under CETH 30 and have correctly discharged the Central Excise duty liability @ 6% after availing abatement @35% in terms of Sr.No.30 of Notification No. 49/2008-CE(NT) as amended. Therefore, they submitted that the demand of Central Excise duty, interest and penalty do not stand sustainable on merits.



(vii) In absence of any specific evidence of fraud, collusion or malafide intent for imposing the extended period, the demand should have been restricted to the normal period and not as per the detection of Audit.

(viii) They did not dispute and agreed to the issue of non-payment of Service Tax on GTA Service and penalty for not obtaining Service Tax registration and non-submission of their ST-3 returns.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and submissions made by the appellant at the time of Personal Hearing as well as those made in the additional written submissions. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs. 1,13,78,414/- alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period April-2015 to June-2017 (01.04.2015 to 30.06.2017). The appellant has not contested the confirmation of demand by the adjudicating authority pertaining to the service tax matters, hence they are not dealt with in this order.

7. It is observed that during the material time, the appellant was engaged in manufacture and clearance of 'Medicated Soap' for various brands/merchant manufacturers. They were holding Central Excise registration for the same and were filing their periodical returns ER-1/ER-3 regularly. Scrutiny of their ER-1/ER-3 returns by the audit officers revealed that they had classified their product 'Medicated Soap' under CETH-34011110 of the CETA, 1985 and discharged their Central Excise duty liability under MRP based assessment by claiming abatement @ 35% and paying Central Excise duty @ 6% ad-valorem. It was observed by the audit officers that though in the Invoices and other records, the appellant had described their product as 'Medicated Soap' classified under CETH-34011110, they should have appropriately paid duty @ 12% ad-valorem after availing abatement of 30% only. The audit observations had culminated in issuance of the impugned SCN demanding Central Excise duty of Rs.1,13,79,414/- alongwith interest and penalty. Demand of Service Tax on GTA service amounting to Rs.21,995/-alongwith interest and penalty was also made in the SCN in question. Besides that, penalties were proposed for not obtaining registration under Service Tax and also for non-filing of ST-3 returns. The adjudicating authority has decided the SCN.vide the impugned order wherein he has confirmed the demand of Central



Excise duty and Service tax alongwith interest as proposed in the SCN as well as penalties were imposed upon the appellants as discussed supra.

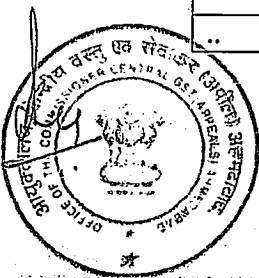
8. It is observed that the main dispute in the case pertains to the classification of the appellant's product 'Medicated Soap'. The adjudicating authority has classified the same under CETH – 34011110, whereas, the appellants intend to classify it under CETH – 30004 9029. It is further observed that in their statutory returns – ER-1/ER-3, the appellants have declared their product as 'Medicated Soap' and classified it under CETH 3401 1110 of CETA, 1985. They have also discharged their duty liability under MRP based assessment as per the provisions of Section 4A of CETA,1985. However, while claiming abatement in terms of Notification No. 49/2008-CE(N.T.) dated 24.12.2008, they have claimed an abatement of 35% and while calculating the rate of duty they have calculated it @ 6% ad-valorem. The legal provisions under Notification No. 49/2008-C.E (N.T.) dated 24.12.2008 are as under :

Notification No. 49/2008-Central Excise (N.T.)

G.S.R. (E)-In exercise of the powers conferred by sub-sections (1) and (2) of section 4A of the Central Excise Act, 1944 (1 of 1944) the Central Government, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.14/2008-Central Excise (N.T.), dated the 1 st March, 2008, published in the Gazette of India Extraordinary, vide number G.S.R.147(E) of the same date, except as respects things done or omitted to be done before such supersession, hereby specifies the goods mentioned in Column (3) of the Table below and falling under Chapter or heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) mentioned in the corresponding entry in column (2) of the said Table, as the goods to which the provisions of sub-section (2) of said section 4A shall apply, and allows as abatement the percentage of retail sale price mentioned in the corresponding entry in column (4) of the said Table.

TABLE

S.No	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as a percentage of retail sale price
1	2	3	4
..
30	30	Medicaments, other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems Explanation. - For the purposes of this entry, "retail sale price" means the retail price displayed by the manufacturer under the provisions of the Drugs (Prices Control) Order, 1995.	35
..
40	3401 11, 3401 19 or 3402	Organic surface active products and preparations for use as soap in the form of bars, cakes, moulding pieces or shapes, other than goods falling under 3402 90 20	30
..



Explanation. - For the purposes of this notification, except for S.No.30, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

8.1. It is apparent from the legal provisions above that the products covered under CETH- 3401 11, 3401 19 or 3402 stands covered under Sr. No. 40 of the said notification and attracts abatement @ 30% of retail sale price (RSP/MRP). However, products covered under CETH-30 are covered vide Sr. no. 30 of the table and attracts abatement @ 35%. However, in all cases, 'retail sale price' means retail sale price declared under the provisions of the 'Drugs (Prices Control) Order, 1995'. In the instant case, inspite of declaring their product under CETH 3401 1110, the appellant have preferred to avail the higher abatement i.e. @ 35% instead of @30%. This action on part of the appellant appears to be deliberate and intended. Further, as the appellant have not clarified regarding the fact that MRP/RSP declared in their product – 'Medicated Soap' are declared 'under the provisions of the Drugs (Prices Control) Order, 1995' or otherwise, and voluntarily classified their product under CETH – 3401 1110, therefore, the claim for abatement under Sr. No. 30 of the table i.e. @ 35% of RSP is nothing but with an intent to evade payment of Central Excise duty.

9. In order to address the issue of classification of the goods, I would like to refer to the classification as per Harmonised System of Nomenclature (HSN) prevalent internationally and which forms the actual basis of CETA, 1985. Relevant extracts of Chapter-34 and Chapter-30 of HSN covering the Chapter notes and explanations of each chapter are reproduced below:

Chapter 34

Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and- similar articles, modelling pastes; "dental waxes" and dental preparations with a basis of plaster
Notes.

1. - This Chapter does not cover :

- (a) Edible mixtures or reparations of animal or vegetable fats or oils of a kind used as mould release preparations under heading 15.17);
- (b) Separate chemically defined compounds; or
- (c) Shampoos, dentiiyces, shaving creams and foams, or bath reparations, containing soap or other organic surface-active agents & heading 33-05.33.06 or 33.05.

2.- For the purposes of heading 34.01, the expression "soap" applies only to soap soluble in water. Soap and the other products of heading 34.01 may contain added substances (for example, disinfectants, abrasive powders, fillers or medicaments). Products containing abrasive powders remain classified in heading 34.01 only if in the



form of bars, cakes or moulded pieces or shapes. In other forms they are to be classified in heading 34.05 as scouring powders and similar preparations".

...

GENERAL

This Chapter covers products mainly obtained by the industrial treatment of fats, oils or waxes (e.g., soap, certain lubricating preparations, prepared waxes, certain polishing or scouring preparations, candles). It also includes certain artificial products, e.g., surface-active agents, surface-active preparations and artificial waxes.

The Chapter does not cover separate chemically defined compounds, or natural products not mixed or prepared.

34.01 - Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent. 8 - Soap and organic surface-active products and preparations, in the form of bars, cakes, moulded pieces or shapes, an paper, B wadding, felt and nonwovens, impregnated coated or covered with soap or detergent :

3401.1 1 - - For toilet use (including medicated products)

3401.19 -- Other

340 1.20 - Soap in other forms

3401.30 - Organic surface-active products and preparations for washing the skin, in the soap form of liquid or cream and put up for retail sale, whether or not containing

(I) SOAP

Soap is an alkaline salt (inorganic or organic) formed from a fatty acid or a mixture of fatty acid & containing at least eight carbon atoms. In practice, part of the fatty acids may be replaced by rosin acids.

...

This part covers in particular :-

(1) Toilet soaps frequently coloured and perfumed, which include : floating soaps and deodorant soaps, as well as glycerin soaps, shaving soaps, medicated soaps and certain disinfectant or abrasive soaps, as described below.

(a) Floating soaps and deodorant soaps.

(b) Glycerin soaps, which are translucent and are made by treating white soap with alcohol, glycerol or sugar

(c) Shaving soaps (shaving creams fall in heading 33.073.

(d) Medicated soaps containing boric acid, salicylic acid, sulphur, sulphonamides or other medicinal substances.

I find that the specific wordings of Chapter Note – 2 i.e. “2.- For the purposes of heading 34.01, the expression “soap” applies only to soap soluble in water. Soap and the other products of heading 34.01 may contain added substances (for example, disinfectants, abrasive powders, fillers or medicaments)....” clearly states that the said CETH – 34.01 covers all Soaps, even if they are containing ‘Medicaments’.

9.1. In furtherance, the explanation at I(d) clearly states that “(d) Medicated soaps containing boric acid, salicylic acid, sulphur, sulphonamides or other medicinal substances.”; here the phrase ‘Medicated Soap’ is clarified as to be



construed for the Tariff purpose and it emphasizes that such 'Medicated Soap' is to be classified under CETH - 3401.

9.2. The classification of products covered under Chapter 30 of HSN are as under:

Chapter 30
Pharmaceutical products

Notes.

1.- This Chapter does not cover :

(a) Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (Section IV);

(b) Preparations, such as tablets, chewing gum or patches (transdermal systems), intended to assist smokers to stop smoking (heading 21.06 or 38.24);

(c) Plasters specially calcined or finely ground for use in dentistry (heading 25.20);

(d) Aqueous distillates or aqueous solutions of essential oils, suitable for medicinal uses. (heading 33.01);

(e) Preparations of headings 33.03 to 33.07, even if they have therapeutic or prophylactic properties;

(f) Soap or other products of heading 34.01 containing added medicaments;

(g) Preparations with a basis of plaster for use in dentistry (heading 34.07);

or.

(h) Blood albumin not prepared for therapeutic or prophylactic uses (heading 35.02).

2.- For the purposes of heading 30.02, the expression "immunological products" applies to peptides and proteins (other than goods of heading 59.37) which are directly involved in the regulation of immunological processes, such as monoclonal antibodies (MAB), antibody fragments, antibody conjugates and antibody fragment conjugates, interleukins, interferons (IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).

3.- For the purposes of headings 30.03 and 30.04 and of Note 4 (d) to this Chapter, the following are to be treated :

(a) As unmixed products:

(1) Unmixed products dissolved in water;

(2) All goods of Chapter 28 or 29; and

(3) Simple vegetable extracts of heading 13.02, merely standardised or dissolved in any solvent; -

(b) As products which have been mixed :

(1) Colloidal solutions and suspensions (other than colloidal sulphur);

(2) Vegetable extracts obtained by the treatment of mixtures of vegetable materials;

and



(3) Salts and concentrates obtained by evaporating natural mineral waters.

...

30.04 - Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale.

...

The heading also excludes :-

(a) Snake or bee venom, not put up as medicaments (heading 30.01).

(b) Goods of heading 30.02, 30.05 or 30.06, however they are put up.

(c) Aqueous distillates or aqueous solutions of essential oils and preparations of headings 33.03 to 33.07, even if they have therapeutic or prophylactic properties (Chapter 33).

(d) Medicated soaps however they are put up (heading 34.01).

(e) Insecticides, disinfectants, etc., of heading 38.08, not put up for internal or external use as medicines.

(f) Preparations, such as tablets, chewing gum or atches (transdermal systems), intended to assist smokers to stop smoking (heading 21.06 or 38.24)

9.3 The general rules of interpretation under the CETA, 1985 reads as under:

The Central Excise Tariff Act, 1985

[ACT NO. 5 OF 1986] [19th January, 1986]

An Act to provide for tariff for Central Duties of Excise BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:-

1. Short title, extent and commencement :

...

2. General rules for the interpretation of this Schedule Classification of goods in this Schedule shall be governed by the following principles:

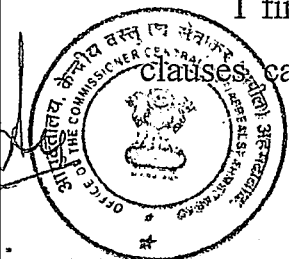
...

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

...

I find that upon referring to the Chapter Notes, explanation and exclusion clauses categorically mentioned for Chapter-30 in the HSN, Chapter-34 of the



HSN and sequentially referring them to Rule – 3(a) of the CETA, 1985, it is clear that the 'description' of the product is most important in identification of appropriate classification of any product. In the instant case, the appellants have described their product as 'Medicated Soap' in their Central Excise returns as well as on the product wrappers. Now, considering the said description and referring to the heading (CETH) which provides the most specific description, I find that :

CHAPTER 34

Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster

1.

2. *For the purposes of heading 3401, the expression "soap" applies only to soap soluble in water. Soap and the other products of heading 3401 may contain added substances (for example, disinfectants, abrasive powders, fillers or medicaments). Products containing abrasive powders remain classified in heading 3401 only if in the form of bars, cakes or moulded pieces or shapes. In other forms they are to be classified in heading 3405 as "scouring powders and similar preparations"*

6. *In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'.*

3401 11 11-- For toilet use (including medicated products):

3401 11 10 1-- Medicated toilet soaps

...

I further find that, in terms of Chapter Note-2 of Chapter-34 and applying the same in line with the description of the product declared by the appellant, I find that upon referring to the Chapter Notes, explanation and exclusion clauses categorically mentioned for Chapter-30 in the HSN, there does not remain any iota of doubt that the product in question i.e. 'Medicated Soap' manufactured by the appellant, undoubtedly merits classification under CETH – 3401 and not under CETH-3004 as claimed by the appellant.

10. It is observed that the Hon'ble Apex Court, in the case of *Commissioner of Central Excise Vs Wockhardt Life Sciences Ltd reported as 2012 (277) E.L.T.299 (S.C)*, has emphasized on the importance of Labels and literature of a Product for classifying them in their proper Chapter Heads. I also find that no such evidences were produced by the appellant in support of their product to be declared as 'Medicines' or 'medicaments' or 'for prophylactic or therapeutic use', therefore such claims of the appellants also do not have merit as the classification of their



product is well settled by the Chapter Notes, explanations and exclusions mentioned in the HSN as discussed supra.

11. As regards the appellants claim for their product to be classified as '*for prophylactic or therapeutic use*', they have not produced any product literature, product label/wrappers showing such words/phrases in support of the product. Regarding the copy of label/wrapper of 'ACVAKETO Soap' produced by the appellants, I find that the said product was reportedly manufactured during the Year-2020 whereas the period covered under the instant case is from April-2015 to June-2017. Hence, the same stands irrelevant to the instant case and is factually misleading.

12. As regards the appellant's claim regarding application of Rule-3(b) for classification of their product, it is observed that the said rules read as under:

General Rules for the interpretation of this Schedule

Classification of goods in this Schedule shall be governed by the following principles :

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Sections or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

2. Any reference in a heading —

(a) to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled;

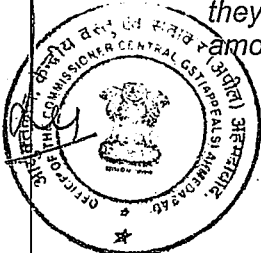
(b) to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of clause (b) of rule 2 or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :—

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to clause (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable;

(c) when goods cannot be classified by reference to clause (a) or clause (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.



I find that the description of the product has been declared as 'Medicated Soap' by the appellants and also classified under CETH-3401 1110 in their statutory returns. Therefore, there is no doubt regarding the description of the product. The product or related evidences produced by the appellant do not show any ambiguity in the description of the same. Hence application of Rule-3(b) is not relevant.

13. As regards the appellants claim regarding confirmation of demand by invoking extended period of limitation as per the observation of Audit, it is observed that during the relevant period i.e. April-2015 to June-2017, the appellants did not submit any documentary evidence/samples of their product alongwith their ER-1/ER-3 returns. Further, they have deliberately mis-declared the rate of abatement as well as rate of Central Excise duty in their ER-1/ER-3 returns with a clear intent to evade payment of duty. The short payment of duty only came to the knowledge when the audit of their records were undertaken. Hence, I find that the ingredients for invocation of extended period of limitation under proviso clause of Section 11A (4) of the Central Excise Act, 1944 is there and hence the amount short paid by them are liable to be recovered by invoking extended period of limitation.

14. Once the invocation of extended period of limitation is upheld, then automatically the penalty provisions under Section 11 AC (1)(c) of CEA, 1944 are attracted. Accordingly, I find that the appellant is liable for penalty on the amount confirmed under Section 11 AC (1)(c) of CEA, 1944.

15. In view of the discussions made above, I do not find any reason to interfere with the findings of the adjudicating authority vide the impugned order. The appeal filed by the appellant is rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.



Akhil Kumar
30th November, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 30th November, 2022

Attested

Sohnath Chaudhary
सोहनार्थ चौधरी/SONHNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST (APPEALS), AHMEDABAD.

By Regd. Post A/D

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3. The Addl./Joint Commissioner, CGST and Central Excise, Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST-Appeals, Ahmedabad
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