आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW00009429CE

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/53/2022-APPEAL 1908 - 12
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-152/2023-24 and 30.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-MT-009-21-22 dated 14.12.2021 passed by the Joint Commissioner, CGST, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jaywin Remedies Pvt. Ltd., Plot No. 122/1, Ravi Industrial Estate, Billeshwarpura, Chhatral, Taluka-Kalol, District:Gandhinagar-382729

कोई व्यक्ति इस अपील-आदेश से असंतोष 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 पूवोक्त 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 मे हो माल की प्रकिया 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 संषोधित 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 in 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 अपीलो 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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."

ORDER IN APPEAL

M/s. Jaywin Remedies Pvt. Ltd., Plot No.122/1, Ravi Industrial Estate, Billeshwarpura, Chhatral, Taluka: Kalol, District: Gandhinagar (hereinafter referred to as the appellant) has filed the present appeal against Order-in-Original No. AHM-CEX-003-JC-MT-009-21-22 dated 14.12.2021 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner, CGST, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No. AAACJ7303GXM001 and were engaged in manufacture of medicaments falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant were engaged in the manufacture of Medicaments on their own account as well as for various loan licensees under different brand names. They were availing the benefit of value based exemption under Notification No.8/2003-CE dated 01.03.2003 (as amended) during F.Y. 2007-08 for the clearances of their own goods. It appeared that the appellant during F.Y. 2006-07 had cleared their own goods valued at Rs.3,61,46,641/- and cleared goods valued at Rs.3,15,81,542/- on behalf of their different loan licensees. The total value of clearances amounted to Rs.6,77,28,183/- and thereby they had crossed the eligibility limit of Rs.400 lakhs during F.Y. 2006-07. The appellant has not clubbed the clearance value of goods manufactured for various loan licensees (under different brand name) with the clearance value of their own manufactured finished goods, to calculate the exemption limit of Rs.400 Lakhs for availing the said exemption notification during the F.Y. 2007-08. Thus, from April 2007 to August, 2007, during the F.Y. 2007-08, the appellant irregularly availed the value based exemption under Notification No.8/2003-CE by not including the goods manufactured and cleared in respect of the loan licensees.

3. Subsequently, the appellant was issued Show Cause Notice dated 29.04.2008 vide F. No. V.30/15- 64/Dem/OA/2007-08 wherein it was proposed to;

a) Deny the benefit of exemption under Notification No.8/2003-CE dated 01.03.2003 for F.Y.2007-08.
b) Recover the Central Excise duty amounting to Rs.24,71,178/- under Section 11A (1) of the Central Excise Act, 1994.
c) Charge interest under Section 11AB of the Central Excise Act, 1944.
d) Impose penalty under Rule 25 of the Central Excise Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. The said SCN was adjudicated vide O-I-O No. 05/ADC(KA)/2009 dated 10.02.2009 wherein the demand for central excise duty amounting to Rs.24,71,178/- was confirmed along with interest. Penalty of Rs.1,00,000/- was imposed. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide O-I-A NO. AHM-EXCUS-003-APP-07-17-18 dated 25.05.2017 remanded the matter to the adjudicating authority to examine the issue in light of the judgment of the Hon'ble Tribunal in the case of Kosha Laboratories.

5. In the remand proceedings, the case was adjudicated vide the impugned order wherein out of the total demand of Rs.24,71,178/- the demand of central excise duty amounting to Rs.16,33,769/- was confirmed along with interest. Penalty of Rs.1,00,000/-

was imposed under Rule 25 of the Central Excise Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The remaining demand was however dropped.

6. Being aggrieved with the impugned order, the appellant filed appeal and the Commissioner (A) vide O-I-A No.AHM-EXCUS-003-APP-46/2022-23 dated 25.05.2017, dismissed the appeal for non-compliance of the provisions of Section 35F of the CEA, 1944. Aggrieved by the O-I-A, the appellant filed an appeal before Hon'ble CESTAT. The said appeal was decided vide Hon'ble CESTAT Ahmedabad vide Final Order No. A/10099/2023 dated 16.01.2023, wherein the matter was remanded back to the Commissioner (A) with the direction to decide the case on merit. The present appeal is the outcome of the above remand order.

7. The appellant was in appeal on the grounds elaborated below:-

- The Joint Commissioner has misdirected himself in not considering the fact that the clearances of loan licensee manufacturers during April 2007 to August 2007 were assessed to full rate of duty by the Excise Department itself, and thus, it was accepted by the Department that the goods manufactured by the loan licensees fell outside the purview of the small scale exemption scheme. When the Revenue itself had accepted the goods of the loan licensees as chargeable to full rate of duty not being the goods covered under the scope of the small scale exemption scheme and such assessments were final and concluded, any proceeding contrary to such concluded assessments was not maintainable in law. It is admitted position of fact that the goods of the loan licensee manufacturers were cleared from the appellant's factory right from year 2005-06 on payment of duties at full rate. It is also an admitted position of fact that assessment of duties on these goods at the full rate were made on the basis that these goods manufactured by the loan licensee manufacturers fell outside the purview of the small scale exemption scheme. For the period right from year 2005-06, admittedly, the goods of the loan licensee manufacturers have not been taken into consideration for calculating the ceiling of Rs. 100 lakhs as well as that of Rs.300/ Rs.400 lakhs; and all these transactions stand concluded now. Therefore, it is not now permissible to the Revenue to change the stand by suggesting that the goods of the loan licensee manufacturers were not ineligible for the grant of small scale exemption and that therefore, value of such goods was also required to be added in the total value of clearances made by the appellant under the small scale exemption scheme.

- The Joint Commissioner has grossly erred in confirming the demand on the basis that the factory of the appellant was located in a rural area and therefore the appellant was eligible to exemption granted under Notification No.8/2003-CE for all the clearances of duty paid branded goods. It is also yet to be established by the Revenue that the appellant's factory was in a rural area and hence, Explanation (H) of Notification No. 8/2003-CE was applicable in the present case.

- No evidence is adduced by the Revenue to establish that the appellant's factory was located in the rural area as contemplated under the above Notification and therefore, the entire basis of the proceedings against the appellant has been on facts which are not established and proved by the Department. Only because it was alleged in the notice that the appellant1s factory was in the rural area, this

allegation or suggestion could not have been taken as an established fact for determining the availability of small scale exemption to the appellant for the goods cleared during April 2007 to August 2007. Thus the entire basis of the notice that the appellant was a manufacturer located in a rural area is thus, unsubstantiated and untenable.

- The Joint Commissioner has failed to appreciate that the goods of the loan licenses could not be considered to be the goods manufactured by the appellant with brand name or trade name of another person. The appellant had only allowed use of its factory and infrastructure to the loan licensee manufacturers. The goods manufactured by the loan licensee manufacturers fell outside the purview of the small scale exemption scheme and hence, they were not eligible for small scale exemption benefit, and therefore, such goods were not to be taken into account for any purpose whatsoever while determining the aggregate value of clearances of the appellant under Notification No.8/2003-CE.

- For deciding appellant's eligibility for the small scale exemption scheme, the goods manufactured by the loan licensees in the appellant's factory could not be considered to be a relevant factor because the appellant had manufactured its goods only and its goods did not bear brand name of anyone else, and therefore, provisions of para-4 of the Notification was not applicable in so far as the issue of its eligibility for small scale exemption notification was concerned. When loan licensees, though they were manufacturers, were not eligible for the small scale exemption at all and the goods manufactured by them were even otherwise not excluded by clause (c) of para-4 of the Notification inasmuch as the loan licensees were not located in a rural area, the entire basis of the proceedings that the goods manufactured by the loan licensees were not ineligible for grant of the exemption in terms of para-4 was incorrect and fallacious.

- The appellant had maintained Cenvat register, RG.I register, invoices and returns for the goods manufactured by the loan licensees in the appellant's factory but the goods belonged to the loan licensee manufacturers and the goods were actually manufactured by the loan licensee manufacturers in law. Therefore, clubbing of clearances of loan licensee manufacturers with the goods manufactured by the appellant for the purpose of small scale exemption scheme was not permissible in law as well as in facts of this case.

- As per the directions of the Commissioner (Appeals), the adjudication had to be done in light of the findings given by the Hon'ble Tribunal in case of M/s. Kosha Laboratories. The Hon'ble Tribunal while deciding the case of M/s. Kosha Laboratories, in para-7 has held that in absence of suppression of facts, penalty under Section 11 AC cannot be sustained. In the facts of the present case, the show cause notice was issued for normal period of limitation and no proposals were made in the show cause notice regarding suppression of facts or any other ingredients of Rule 25 or Section 11AC, therefore, penalty of Rs. 1 lakh imposed upon the appellant is not in consonance with the view of the Hon'ble CESTAT in the case of M/s. Kosha Laboratories. The imposition of penalty is therefore without the authority of law and contrary to the directions of remand. Assuming without

admitting that Section 11 AC of the Act was applicable in the present case, it was not a mandatory provision for imposing penalty equal to the amount of duty. The Joint Commissioner has therefore, acted without jurisdiction in imposing penalty of Rs.1,00,000/-on the appellant. The matter of penalty is governed by the principles as laid down by the Hon' ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon' ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so.

- Recovery of interest under Section 11AB of the Act is also without any authority in law inasmuch as the provision of Section 11 AB is not attracted in the instant case, as there is no short levy or short payment or on-levy or non-payment of any excise duty.

8. Personal hearing in the case was held on 28.11.2023. Shri Sudhanshu Bissa, Advocate, appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum and requested to set-aside the impugned order and allow the appeal.

9. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of **Rs. 16,33,769/-** along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period April, 2007 to August, 2008.

10. The Commissioner (A) remanded the matter with the direction to examine the issue in line with the ratio given by Hon'ble Tribunal in the case of M/s. Kosha Laboratories. In said decision, Hon'ble Tribunal held that the duty already paid on the branded goods is required to be adjusted against the duty demanded from the appellant.

11. The SCN alleges that the appellant has not accounted the value of branded goods while computing the aggregate limit of Rs.400 lakhs for availing the benefit of aforesaid notification during the F.Y. 2007-2008. The adjudicating authority in the impugned order after considering the C.A. certificate and the calculation sheet submitted by the appellant and the report submitted by the JDC, arrived at following calculation;

Clearance Value (own) as per SCN (April, 2007-August,2008)	Duty required to be paid on clearance value (Own) as per SCN period @ 16.48%	Clearance value (Loan Licensee) as per SCN period	Duty paid as per Notice and as per JDC's report during SCN period	Duty required to be paid
1,71,06,726	28,19,188	51,02,484	11,85,419	**16,33,769**

12. It is observed that the appellant are contending the impugned order mainly on two grounds:-

(a) The branded goods were not manufactured by the appellant. Appellant only allowed the use of its factory and infrastructure to the loan licenses manufacturers, such clearances cannot be taken into account for the purpose of determining the aggregate value of clearances of the appellant.

(b) Revenue failed to established that the appellant's factory was located in a rural area and hence, Explanation (H) of Notification No. 8/2003-CE was applicable in the present case.

13. In terms of Sr. No.3, of Notification No. 8/2003-CE dated 01.03.2003, the clearance of brand name or trade name of another person shall not be taken into account. The brand name and trade name is defined in clause (A) of the explanation. Relevant text of the notification is re-produced below;

*3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances **shall not be taken into account**, namely : -*

*(a) **clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4;***

(b) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;

(c) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.

4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person; except in the following cases :-

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 :

Explanation. - For the purposes of this notification, -

*(A) "**brand name**" or "**trade name**" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person;*

13.1 So, on the first issue listed at **(a),** I find that the appellant was manufacturing goods on loan licencee basis. The appellant have admitted that the goods manufactured from appellant's factory was cleared by them on payment of full rate of excise duty and the inputs used in such goods were properly accounted for in the register of the appellant for transactions of loan licensees. Since the appellant was manufacturing and clearing goods of other manufacturers, their contention that they were not using the brand name or trade name of other manufacturers is not accepted because whichever goods were manufactured and cleared from the appellant's factory contained brand name or trade name (like symbol, label, monogram etc) specifying that the goods belonged to specific brand/trade. Hence, I find that the goods manufactures and cleared by the appellant using others trade name shall be covered under Sr. No. 3 of the said notification.

14. Another contention of the appellant listed at point **(b)** is that the revenue failed to establish that their factory was located in a rural area hence, Explanation (H) of

Notification No. 8/2003-CE was applicable in the present case. I find that rural area is defined in the definition in clause (H) of the explanation, which is reproduced below;

*(H) "**rural area**" means the area comprised in a village as defined in the land revenue records, excluding -*

(i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee, on

(ii) any area that may be notified as an urban area by the Central Government or a State Government.

15. In terms of above definition, area comprised in a village defined in land revenue records is rural area. However, the areas under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee, on any area that may be notified as an urban area by the Central Government or a State Government are excluded.

16. I find that in terms of Sr. No.3 of the Notification No. 08/2003-CE dated 01.03.2003 (as amended), the clearances bearing the brand name or trade name of another person shall not be included in aggregate value of clearance for home consumption. However, in terms of Para-4 (c) of the notification, if the specified goods bearing brand name or trade name manufactured are cleared from the factory located in rural area then all such clearances shall be counted in the aggregate clearances for availing exemption. However, it is observed that the adjudicating authority could not bring any documentary evidence to prove that the factory of the appellant falls under rural area therefore their clearances of branded goods shall be taken into account for computing aggregate value for exemption limit specified in the SSI notification. The appellant also could not produce any evidence to prove that their factory falls under the exclusion clause (i) & (ii) of Explanation (H) of Notification. Since the exemption depends on the fact whether the factory of the appellant falls under rural area or not, I find that this fact needs to be examined and verified in proper manner.

17. I therefore, in the interest of justice, remand back the case to the adjudicating authority to give a speaking order deciding whether the factory of the appellant falls under rural area. The appellant is also directed to submit all the relevant documents and details to the adjudicating authority, in support of their contentions.

18. In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant by way of remand.

19. 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.

30.11.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 30.11.2023

Attested

Attested

22/1

(रेखा नायर)
अधीक्षक (अपील्स)
केंद्रीय जीटी .एस ., अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Jaywin Remedies Pvt. Ltd., - **Appellant**
Plot No.122/1, Ravi Industrial Estate,
Billeshwarpura, Chhatral,
Taluka: Kalol, District : Gandhinagar

The Joint Commissioner - **Respondent**
CGST, Commissionerate Gandhinagar,
Gandhinagar

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
   (For uploading the OIA)
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