



**आयुक्त ( अपील ) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
**केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद**  
**Central GST, Appeal Commissionerate, Ahmedabad**  
**जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.**  
**CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015**  
**☎ 07926305065- टेलिफैक्स 07926305136**



**DIN: 20230964SW0000633864**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/137 /2023-APPEAL /6026-30

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-101/2023-24  
दिनांक Date : 15-09-2023 जारी करने की तारीख Date of Issue 18.09.2023

आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 33/AC/D/2022-23/AM दिनांक: 29.11.2022 , issued by  
The Assistant Commissioner, CGST Division-IV, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Brussels Laboratories Private Limited, 33, Changodar Industrial Estate, Sarkhej Bavla Road, Changodar, Ahmedabad - 380210

2. Respondent

The Assistant Commissioner, CGST Division-IV, Ahmedabad North, 2nd Floor, Gokuldharm Arcade, Sarkhej-Sanand Road, Ahmedabad-382210

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(iii) 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

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

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।

(c) 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.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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.

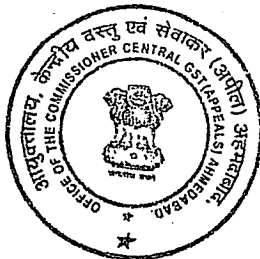
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



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 Appellate 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

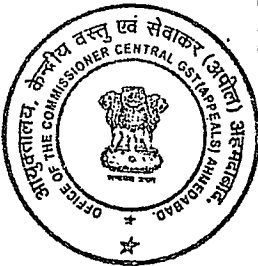
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

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. Brussels Laboratories Pvt. Ltd., 33, Changodar Industrial Estate, Sarkhej Bavla Road, Changodar, Ahmedabad-382210 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 33/AC/D/2022-23/AM dated 29.11.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in manufacturing PP Medicaments falling under Chapter Head 30041020 of the Central Excise Tariff Act, 1985. They were registered and were holding Central Excise Registration No. AAACB6302KXM001. They were also registered under the Finance Act, 1994 and were holding Service Tax Registration No. AAACB6302KSD002.

2. During the course of audit of the records and returns of the appellant undertaken by the Audit officers for the period from April 2016 to June 2017, following objection were raised vide Final Audit Report (FAR) No. CE/ST-1195 dated 30.04.20021.

**A) Short payment of Excise duty due to sale on transaction value instead of Maximum Retail Price (MRP):**

It appeared that the appellant have cleared the goods PP Medicaments under the brand name of M/s Brayton Pharmaceuticals Private Limited, Ahmedabad. The goods were falling under Chapter Head 30 of the Central Excise Tariff Act, 1985. The appellant have paid Central Excise duty on clearance of said goods on transaction value in terms of Section 4 of the Central Excise Act, 1944, whereas they were required to clear the same on payment of Central Excise duty under Section 4A of the Central Excise Act, 1944. Notification No. 49/2008-CE (NT) dated 24.12.2008, as amended from time to time, has specified that on Medicaments, other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems, under Chapter 30, the provisions of sub-section (2) of said Section 4A has been applicable and the abatement available in terms of percentage of retail price has been 35%. Therefore, the appellant were required to clear the goods manufactured by them as per the provisions of sub-section (2) of said Section 4A of the Central Excise Act, 1944 but they have cleared their goods under transaction value in terms of Section 4 of the Central Excise Act, 1944. For the purpose of valuation of said goods, MRP of similar products available on internet was taken. It appeared that the appellant have short paid the Central Excise duty of Rs.12,70,241/- which was required to be recovered from them alongwith interest and penalty.

**B) Wrong availment of credit** - During audit it came to notice that the appellant have availed and utilized Cenvat credit on CC Steel used for construction of factory shed. Cenvat Credit on said goods was not available to them in terms of the exclusion clause of Rule 2(k) of the Cenvat Credit Rules, 2004. Therefore, Cenvat credit of Rs. 12,805/- wrongly availed was required to be recovered under Section 11A (4) of the Central Excise Act, 1944 read with Rule 14 (1) (ii) of the Cenvat Credit Rules, 2004, alongwith interest and penalty.

**C) Penalty for late filing of ER-1 returns-** During audit of the returns filed by appellant it was found that the appellant have delayed in filing of monthly



ER-1 for the period July, 2017 by 37 days and therefore as per provision contained under Rule 12(6).of the Central Excise Rules the appellant were liable for late fee of Rs. 3,700/-.

**D) Non-payment of Service Tax as a recipient on legal services-** It was observed that the appellant have made expenses towards legal service amounting to Rs.1,10,000/- during 2016-17 on which they have not paid the applicable Service Tax under reverse charge mechanism as per Notification No. 30/2012-ST dated 20.06.2012. The amount of Service Tax of Rs. 16,500/- has been recoverable from the appellant under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest. However, the appellant have also rendered themselves liable for penalty under Section 78 (1) of the Finance Act, 1994 for suppressing the material fact with intent to evade service tax.

**E) Non-payment of Service Tax on Manpower service-** The appellant have made expenses towards manpower service on service received from M/s Prasana Corporation, M/s Vinod Gupta and M/s Alok Corporation during 2016-17 and 2017-18 ( upto June 2017). They were required to pay Service Tax under reverse charge mechanism as per Notification No. 30/2012- ST dated 20.06.2012. The amount of Service Tax of Rs. 1,41,512/- has been recoverable from the appellant under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest. The appellant have also rendered themselves liable for penalty under Section 78 (1) of the Finance Act, 1994 for not disclosing receipt of manpower service and non-payment of applicable service tax under reverse charge mechanism thereby suppressing the material fact with intent to evade service tax.

**2.1** A Show Cause Notice (SCN) No. VI/1(b)-57/IA/AP-XXVII/C-VI/18-19 dated 05.05.2021 was therefore, issued to the appellant proposing recovery of Central Excise duty of Rs. 12,70,241/- along with interest under Section 11A(4) and Section 11AA of the CEA, 1944; recovery of wrongly availed Cenvat credit amounting to Rs.12,805/-alongwith interest; recovery of late fees of Rs.3,700/- u/r 12(6) of the CER, 2002; recovery of service tax amounting to Rs.16,500/- on legal services alongwith interest; recovery of service tax amounting to Rs.1,41,512/- on Manpower Services alongwith interest; Imposition of penalties under Section 11AC(1)(c) of the CEA 1944, penalty under Rule 25 and penalty under Section 78 of the Finance Act, 1994 were also proposed.

**2.2** The said SCN was adjudicated vide the impugned order, wherein the demand of Central Excise duties and service tax demand proposed in the SCN were confirmed alongwith interest. Equivalent penalty under Section 11AC and under Section 78 was imposed and late fees of Rs.3,700/- was also imposed under Rule 12(6) of the CCR, 2004.

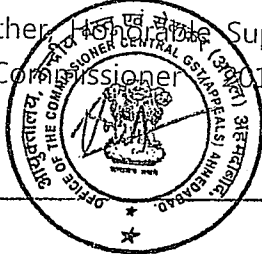
**3.** Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-



As per Section 4A of the Central Excise Act, 1944, the Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made there under or under any other law for the time being in force, to

declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply. Sub-Section (2) states that where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette. Accordingly, the provisions for MRP based valuation are applicable in case the provisions of Legal Metrology Act, 2009 are applicable. In case, the same is not applicable to particular goods or transactions, MRP based valuation shall not apply.

- As per Section 3 of the Legal Metrology Act, 2009, the provisions shall not apply to packaged commodities meant for industrial consumers or institutional consumers. M/s. Brayton Pharmaceuticals received a contract from Ahmedabad Municipal Corporation ('AMC') for the supply of medicines as per the contract. The contract mentions the name of the medicine and its specification along with the manufacturer's name. Brussels Laboratories Pvt Ltd is one of the manufacturers in the contract given by AMC to Brayton. Accordingly, it can be argued that there is a tripartite agreement wherein the AMC has given a contract to Brayton to supply products manufactured by Brussels Laboratories Pvt Ltd. The goods manufactured by the appellant Company are directly dispatched to AMC. Copy of the contract received by M/s. Brayton Pharmaceuticals from AMC is attached. The contract specifically mentions the name of Brussels Laboratories Pvt Ltd as a manufacturer of certain medicines. Thus, Brussels Laboratories Pvt Ltd was required to manufacture and dispatch these medicines to AMC. Sample invoice copy issued by Brayton Pharmaceuticals to AMC also indicate that the products supplied by Brussels Laboratories Pvt Ltd to Brayton Pharmaceuticals have only been supplied to AMC. Sample invoice copies are also attached. Thus, the provisions regarding MRP fixation are not applicable for goods meant for industrial consumers or institutional consumers and accordingly, MRP based valuation for excise duty will not apply. The appellant was required to supply the medicines to the institutional buyer, i.e. AMC, and these medicines were not meant for retail sales. As the goods were not supplied for retail sales, no MRP was required to be affixed and accordingly, Section 4A of the Act shall not be applicable.
- The appellant was not required to discharge excise duty on MRP since the goods did not bear MRP and were sold to the institutional buyers under a contract. Thus, in that case, provisions of Section 4 of the Act are applicable. Honorable Supreme Court in the case of Commissioner v. Wyeth Ltd. -2015 (320) E.L.T. A99 (S.C.) held that when the goods are manufactured and supplied as free samples with another product and they are not meant for Retail Sale then the valuation of such goods cannot be made under Section 4A of the Central Excise Act, 1944 as there is no element of sale involved and the valuation should be done as per the provisions of Section 4 of the Act and not as per under Section 4A of the Act. A copy of the judgment is attached for reference. Further, Honorable Supreme Court in the case of Bajaj Food Products Pvt. Ltd. v. Commissioner -2017 (345) E.L.T. A138.



(S.C.) held that goods i.e. biscuits supplied to Municipal Corporation of Delhi under National Program of Nutritional Support of Primary Education qualified to be sales to institutional buyer and required to be assessed under Section 4 of Central Excise Act, 1944 and not under Section 4A ibid in as much as MCD supplied wheat free of cost for manufacture of such biscuits, negotiated and fixed the price. MRP mentioned on such goods was not a legal MRP but just a figure mentioned in the name of MRP.

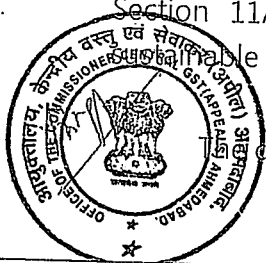
- The Central Excise Audit department had conducted an audit for the period April 2015 to March 2016 and similar transaction as stated above was undertaken by the Company during FY 2015-16 also. During the course of audit, the audit department had accepted the valuation done by the Company for the aforesaid transaction during FY 2015-16 and no demand was raised by the department on the grounds that MRP based valuation is applicable on such transaction. Copy of audit report is attached herewith. When the department itself that had accepted the contention of the Company with regard to valuation in FY 2015-16, the department itself can not contradict the view in the next financial year for the same type of transaction. Accordingly, the demand of excise duty amounting to Rs 12,70,241 is bad in law and liable to be quashed. Further, since there is no tax liability, the question of penalty does not arise.

4. Personal hearing in the matter was held on 21.08.2023. Shri Dhaval Shah, Chartered Accountant appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum. He submitted that as per the contract between AMC and M/s. Brayton Pharmaceuticals Pvt. Ltd., the supply of medicines was to be sourced from the appellant. He further submitted that the order being shipped to customer, they had physically supplied the goods to AMC only. He submitted that under the legal metrology rules, when supply is made to any institution, MRP based valuation is not applicable. He therefore requested to value the goods as per transaction value and set-aside the impugned order. He also requested for 10 days time to submit additional written submissions with the supporting documents.

4.1 The appellant in their additional written submission reiterated the grounds of appeal and submitted list of tablets as per the Tender dated 23.02.2016, sample retail invoice issued by M/s. Brayton Pharmaceuticals Pvt. Ltd. to various hospitals mentioning the product (tablets) description, quantity, Batch No., name of the Company who manufactured the product.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, additional written submission and those made during personal hearing. I find that the appellant in the appeal memorandum is only contesting the service tax demand of Rs.12,70,241/- confirmed alongwith interest and penalty. The issue to be decided in the present case is whether recovery of Excise duty of Rs.12,70,241/- under Section 11A(4) of the Central Excise Act, 1944 alongwith interest and penalty is

demand pertains to the period April, 2016 to June, 2017.



**5.1** On the short payment of excise duty due to sale on transaction value instead of Maximum Retail Price (MRP), the appellant have claimed that as per Section 3 of the Legal Metrology Act, 2009, the provisions regarding MRP fixation are not applicable for goods meant for industrial consumers or institutional consumers and accordingly, MRP based valuation for excise duty will not apply. They claim to have supplied the medicines to the institutional buyer, i.e. AMC, and these medicines were not meant for retail sales. As the goods were not supplied for retail sales, no MRP was required to be affixed and accordingly, Section 4A of the Act shall not be applicable. The adjudicating authority however, held that in terms of Notification No. 49/2008-CE dated 24.12.2008, Medicaments, other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems, under Chapter 30, the provisions of sub-section (2) of Section 4A of the CEA, 1944 shall be applicable wherein the abatement available in terms of percentage of retail price has been 35%. The appellant was therefore required to clear the goods manufactured by them as per the provisions of sub-section (2) of said Section 4A of the Central Excise Act, 1944 instead of transaction value in terms of Section 4 of the Central Excise Act, 1944.

**5.2** To examine the issue, relevant text of Section 4 & Section 4A is reproduced below:-

**SECTION [4. Valuation of excisable goods for purposes of charging of duty of excise.** — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

**SECTION [4A. Valuation of excisable goods with reference to retail sale price.** — (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

[Notification No. 49/2008-C.E. (N.T.), dated 24-12-2008]

**MRP based valuation — Abatement percentage reduced across the board**





*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 1st 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 1986) 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.*

<i>S. No.</i>	<i>Chapter, heading, sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Abatement as a percentage of retail sale price</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
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

5.3 I find that in terms of Section 4, the goods which are sold for delivery at the time and place of removal and the buyer and seller are not related persons as defined in the Act and the price, which represents the above said transaction value, is the sole consideration for such sale the transaction value, so determined, shall be treated as assessable value of the goods for the purpose of charging central excise duty. Valuation of such excisable goods shall be done on transaction value. Whereas, in respect of some excisable goods, in packaged form, on which maximum retail price inclusive of all taxes are to be affixed under the provisions of Legal Metrology Act 2009 (in place of erstwhile Weights and Measure Act, 1976) and which are also notified vide C.Ex. Notification-49/2008-CE (N.T) dated 24.12.2008, the assessable value of such goods for the purpose of levy of duty is deemed to be the retail sale price declared on its package less the abatement allowed at the rate prescribed by the said notification. Section 4A of the CEA, 1944 empowers the Central Government to notify/specify goods on which duty shall be paid on Retail Sale Price (RSP). The basic requirement for levy under MRP based valuation is that the goods should be covered under provisions of Legal Metrology Act, 2009 (1 of 2010). The Central government has issued notification specifying the commodities for which the provision is applicable and the abatements permissible, if any. I find that Notification No. 49/2008-C.E. (N.T.), dated 24-12-2008, covers medicaments other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems. Wherein, abatement of 35% has been provided. I find that the appellant has cleared medicaments hence are covered under above notification.



5.4 The appellant however claimed that M/s. Brayton Pharmaceuticals Pvt. Ltd. received a contract from Ahmedabad Municipal Corporation ('AMC') for the supply of medicines. The appellant being one of the manufacturers, M/s. Brayton amongst various other manufacturers, also supplied the medicaments manufactured by the appellant to AMC. The goods manufactured by the appellant were directly dispatched to AMC. They also provided samples of medicines to AMC which clearly indicate 'AMC Supply Only' and thus do not bear retail sale. Since these goods are directly supplied to the AMC stores or hospitals, supply of such medicines should be considered as supply to institutional consumer.

5.5 I have gone through the contract entered between M/s. Brayton Pharmaceuticals and AMC. As per the contract a tender was floated for AMC Central Medical Stores. The contract mentions the item code no., item name & specification, standard, name of manufacturer, units, quoted rates per unit. I find that the medicines were provided in Strip, bottles, sachet, tubes etc. and rates mentioned were per unit price.

5.6 However, I find that in terms of Rule 3 of the LEGAL METROLOGY (PACKAGED COMMODITIES) RULES, 2011, the provisions of this chapter shall not apply to packages of commodities containing quantity more than 25 Kg/25Ltr; Cement, fertilizer & agricultural farm produce sold in bags above 50kgs and packaged commodities meant for industrial consumer or institutional consumer. Relevant text is reproduced below:-

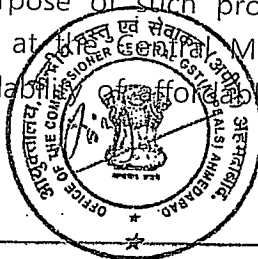
**[RULE 3. Application of Chapter.** - The provisions of this chapter shall not apply to -  
 (a) packages of commodities containing quantity of more than 25 kilogram or 25 litre;  
 (b) cement, fertilizer and agricultural farm produce sold in bags above 50 kilogram; and  
 (c) packaged commodities meant for industrial consumers or institutional consumers.]

5.7 The terms 'industrial consumers' or 'institutional consumers' are defined in the said Rules, which is reproduced below:-

[(bb) "**industrial consumer**" means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale';

[(bc) "**institutional consumer**" means the institution which buys packaged commodities bearing a declaration 'not for retail sale', directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes;]

5.8 I find that the AMC Central Medical Stores are functioning under Ministry of Health and their main function is Procurement, Storage & Distribution of All Medical Supplies. The drugs are procured in bulk and distributed to various government hospitals. As the medicaments are procured from the wholesale dealers for the use by government run hospital and not for commercial or trade purpose, the provisions regarding MRP fixation shall not be applicable for goods meant for such industrial consumers. As the appellant has supplied the medicines to the institutional consumer, i.e. the Central Medical Stores run by AMC, I find that these medicines were not meant for commercial or trade purpose. The purpose of such procurement is to ensure availability timely access to key medicines at AMC Central Medical Store. Access to treatment is heavily dependent on the availability of affordable medicines. A regular,



sustainable supply of essential medicines is required to avoid medicine shortages that can cause avoidable suffering and death. This is a standard methodology adopted by World Health Organization (WHO) to strengthen and coordinate the management and distribution of all medical supplies along the Supply Chain in order to maintain appropriate level of supplies at all times. So far as the goods were not supplied for retail sales, no MRP was required to be affixed and accordingly, valuation under Section 4A of the Act shall not be applicable.

6. In view of the above discussion, I uphold the valuation of medicaments done by the appellant under Section 4 considering the fact that the goods supplied were never meant for commercial or trade purpose. Accordingly, I find that the demand of Rs.12,70,241/- is not sustainable on merits. When the demand is not sustainable, question of demanding interest and imposing penalty also does not arise.

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

8. 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.

(शिव प्रताप सिंह)  
आयुक्त (अपील)

Date: 15.09.2023

Attested

*Rekha A. Nair*  
(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

By RPAD/SPEED POST

To,  
M/s. Brussels Laboratories Pvt. Ltd.,  
33, Changodar Industrial Estate,  
Sarkhej Bavla Road, Changodar,  
Ahmedabad-382210

The Assistant Commissioner,  
CGST, Division-IV,  
Ahmedabad North  
Ahmedabad

Appellant

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. ~~Guard File.~~

