• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल; केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद – 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)/41&43/Ahd-I/2016-17 /1363-67
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-090 & 091-2016-17**
दिनाँक **31.03.2017** जारी करने की तारीख Date of Issue 06/04/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Addl. Commissioner, Div- केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं **20/CX-I/Ahmd/ADC/PMR/2016** दिनाँक: **29/03/2016,** से सृजित

Arising out of Order-in-Original No. **20/CX-I/Ahmd/ADC/PMR/2016** दिनाँक: **29/03/2016** issued by Addl. Commissioner, Div-Central Excise, Ahmedabad-I

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. LGS Formulations
&
Shri Arvind L Anand

Ahmedabad

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 a 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, 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 :

(i) 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 प्रकिया के दौरान हुई हो।

(ii) 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.

(b) 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।

...2...

(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।

(b) 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।

(c) 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 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 नें वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 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 tc :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

The appeal to the Appellate Tribunal shall be filed n 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 ir 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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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), के प्रति अपीलो 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 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

Two appeals have been filed M/s. LGS Formulations, 5306, Phase-I, GIDC, Vatwa, Ahmedabad- 382 445 [for *short - 'appellant-1'*] and Shri Arvind L Anand, Manager of the appellant-1[for *short - 'appellant-2'*] , have been filed against OIO No. 20/Cx-I Ahmd/ADC/PMR/2016 dated 29.3.2016, passed by the Additional Commissioner, Central Excise, Ahmedabad-I Commissionerate[for short - '*adjudicating authority*'].

2. Briefly stated, a case was booked against the appellant-1, which subsequent to completion of investigation, led to a show cause notice dated 27.2.2015 being issued, *inter alia*, alleging short payment of central excise duty on account of mis-classification of finished goods, clearance of goods at suppressed value and wrong availment of benefit of exemption notification, excess/shortage of goods, etc.. The show cause notice, in addition to the demand of duty along with interest, proposed penalty on appellant-1 and appellant-2 in addition to confiscation of the goods.

3. The adjudicating authority vide his impugned OIO dated 29.3.2016, confirmed the charges and demand along with interest in the show cause notice. Penalties were also imposed on both appellant-1 and appellant-2.

4. Feeling aggrieved, the **appellant-1**, has filed this appeal on the grounds that:

(a) the true and correct meaning of the term *measured doses* has not been appreciated by the adjudicating authority and mere publication of ingredients has been wrongly construed as measured doses; that *measured doses* means "the quantity of medicament to be administered to a patient, as directed by the physician"; the term does not refer to use of specific ingredients but refers to preparation of predetermined quantity of medicine required to be administered in single doses to a patient for specific ailment;
(b) the HSN in respect of chapter heading 3004 mentions that measured doses should be in the form of tablets, ampoules, capsules, cachets, drops or pastilles prepared for taking as single doses for therapeutic or prophylactic use;
(c) that since the ayurvedic medicaments are not prepared in pre-determined doses it cannot be classified under chapter heading 3004; that they have correctly classified it under chapter heading 3003;
(d)that the charge of undervaluation on account of both the legal entities being related was clearly mis placed and without justification;
(e) the reference to the website in the impugned order to suggest that the appellant as well as M/s. Essen Pharmaceuticals were part and parcel of the buyer company is in clear violation of principles of natural justice and fair play;
(f) the adjudicating authority restrained from relying on the a legation but concluded the issue on the basis of material gathered from the web site of the buyer company during the course of adjudication of the matter;
(g) it is an undisputed fact that the appellant had sold their goods not only through the alleged related buyer but also through other entities;
(h) that there was no mutuality of interest since the Revenue has failed to prove that the manufacturer and buyer both had interest in the business of each other;
(i) the demand of Rs. 43,94,622/- has not been made on such basis but the assessable value for the medicines sold by the appellant to the said buyer company has been arrived at on an average basis by adding 20% to the actual price charged by the appellant from the said buyer company;
(j)the appellant had deposited the amount of duty, interest and penalty only to show their bonafide;

(k) in respect of the demand for the period from 2009-10 to 31.3.2011, the exemption notification no. 4/2006-CE (Sr. No. 62B), exempts all goods other than menthol crystals falling under chapter 3003;
(l) with respect of demand for the period from 1.4.2011 to 31.3.2014 ayurvedic medicines manufactured by them were exclusively in accordance with Arya Bhishak, an authoritative book specified in the first schedule to the Drugs and Cosmetics Act, 1940; that the label of the product also carried its composition wherein names as mentioned in the specified books were incorporated on the label;
(m) that both the condition of the notification i.e. product being manufactured in compliance with the formulae as well as requirement of mentioning the name as specified in such books were duly complied with;
(n) that notification no.1/2013 permitted brand name other than names mentioned in the authoritative text;
(o) that similar ayurvedic medicines being manufactured by M/s. Trio Healthcare Private limited falling under the Ahmedabad-I Commissionerate wherein identical benefits were and are being claimed and allowed to them without any objection:
(p) that since the appellant are prohibited from declaring sale price or retail price on physicians sample the assessment of such goods cannot be made under value of such other goods;
(q) physicians samples are not even sold nor are they meant to be sold by the appellant and therefore there is obviously no retail sale price declared on packages containing physicians samples of medicines;
(r) the demand of Rs. 6412/- is unjustified because there was no real shortages but it was on account of clerical mistakes;
(s) the confiscation of finished goods, is not correct;
(t)extended period is not invocable;
(u) no penalty is imposable.

4.1 Appellant-2, feeling aggrieved, has raised the following grounds:
(a) the penalty imposed is bad and illegal;
(b) he is a employee of the appellant-1 and has no personal involvement in the business Activity;
(c) that no penalty is imposable when employee was discharging his duties in accordance
with the directions of the employer;
(d) that they would like to refer to the case of Vinod Kumar [2006(199) ELT 705, R K Ispat Udyog [2007(211) ELT 460], and Tribunals order no. A/835/WZB/AHD 09 dated 20.4.2009 in the case of Shri Hitesh Kumar Patel.

5. Personal hearing in both the matters was fixed on 4.1.2017 but the advocate of the appellant sought adjournment. Thereafter, the hearing was fixed on 17.1.2014, wherein Shri Amal P Dave, Advocate, was further granted time upto 23.1.2017 since he did possess the requisite information. In respect of the hearing slated on 23.1.2017, the appellant again sought an adjournment. Personal hearing was thereafter held on 16.2.2017, wherein Shri Amal P Dave, Advocate, reiterated the grounds of appeal. However, on going through selected pages of 'Arya Bhyishak' submitted with the written submission, I found that certain ingredients have been circled which shows that these are the ingredients which are used by the appellants in their product which they are claiming to be as per 'Arya Bhishak' formula. The advocate failed to submit the sample product despite two adjournments, but he explained the composition of the product. On going through the photocopy of Arya Bhishak, it is observed that certain ingredients were a part of the *welzyme syrup*, but certain ingredients mentioned in the Arya Bhishak, were not a part of the same. Since it was not understood why ingredients were not included in the product and as the advocate was not in

a position to explain the matter, I allowed the advocate to make a further written submission in the matter with full specified authoritative books, within 15 days to prove that these products were manufactured as described in the authoritative books. However, till date the advocate has not submitted any such submission. Since considerable time has lapsed, I take up the appeal for decision.

6. I find that there is a delay of 8 days in filing both the appeals. The appellants have filed a condonation of delay application, in this regard. In terms of proviso to section 35 of the Central Excise Act, 1944, I condone the delay.

7. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The questions to be decided in the present appeal are manifold viz. [a]classification of finished goods i.e. whether under chapter sub heading 3004 as claimed by revenue or under 3003; [b]clearance of goods at suppressed value and whether the appellant has wrongly availed the benefit of notification; [c] valuation of physicians sample and [d] excess/shortage of finished goods.

8. I will go through these questions one after the other. Moving on to the first question *supra*, regarding **classification of goods**. The notice alleged that the ayurvedic medicaments put up in *measured doses* or in forms or packings for retail sale are classifiable under chapter sub heading 3004 instead of 3003. The adjudicating authority in his impugned OIO held that the basic difference of products to be classified under chapter sub heading 30049011 and 30039011 is that the former includes medicaments in measured doses while the latter includes medicaments not in measured doses; that on going through list of various medicaments of the appellant it is evident that each and every medicament is manufactured from mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses. The appellant however, has contested this finding by quoting Butterworth Medical Dictionary which defines 'measured doses' as – *the quantity of medicament to be administered to a patient as directed by the physician* and by quoting the explanatory notes of HSN under chapter sub heading 3004, wherein it is specifically provided that the measured doses should be in the form of tablets, ampoules, capsules, cachets, drops or pastilles prepared for taking as single doses for therapeutic or prophylactic use. The reasoning expounded by the adjudicating authority does not appear to be logical or tenable. Since the logic adopted by the adjudicating authority in classifying the goods is flawed, the finding of the adjudicating authority classifying the goods manufactured by the appellant under chapter heading 3004 of Central Excise Tariff Act, 1985, is set aside.

9. Moving on to the second question, **clearance of goods at suppressed value**. The appellant had during the course of investigations, admitted to the suppressed value and had paid an amount of Rs. 3,99,424/- towards duty, Rs. 1,25,245/- towards interest and Rs. 74,645/- towards penalty. The amount was paid without any protest under their free will. Subsequent to paying the amount, the appellant had requested for conclusion of proceedings under section 11A(7)(ii) of the Central Excise Act, 1944 and waiver of show cause notice, which clearly shows the appellant's *mens rea*. It is indeed baffling that now the appellant is questioning the suppression charge in the notice, the duty, interest and penalty of which was stands paid without raising any protest.

9.1 However, since the Revenue did not conclude the proceedings it went forward by issuing a show cause notice and thereafter adjudicating the same. I find that the adjudicating authority, has held that the sales through M/s. Shrinivas (Guj) Laboratories Private Limited and M/s. Essen Pharmaceuticals and other related firms as sales made to a related person and thereafter by relying on the Central Excise Valuation Rules(Determination of Price of Excisable Goods),Rules 2000 and CBEC's Circular no. 643/34/2002-CE dated 1.7.2002, confirmed the duty demand. One should not forget that Apellant-2, in his statement dated 4.2.2013, had stated that Shri Shrinivas Prasad, the proprietor of Appellant-1, is also one of the director of M/s. Shrinivas (Guj) Laboratories Private Limited, the other director being his wife. This statement has not been refuted till date.

9.2 The appellant-1 has contended that the pie diagram was not mentioned in the show cause notice; that the goods were sold not only through the alleged related buyer but also through other entities; that the demand has been raised on the average basis by adding 20% to the actual price charged by the appellant. The averments are without basis. Principles of natural justice demands that allegations need to be provided to the person against whom it is being made. It is not understood as to how the appellant-1 [a proprietary concern, who is also one amongst the two Directors of M/s. Shrinivas (Guj) Laboratories] can claim to be not knowing of something which is very clearly mentioned in the website of M/s. Shrinivas (Guj) Laboratories. Facts which are known in public domain need not be disclosed. Even otherwise, I feel that this argument has been raised just for the sake of raising it. Coming to the averment regarding calculation of the demand. I find that the worksheets prepared on the basis of which demands were raised has already been agreed to by the Manager and authorized representative of the appellant-1. The authorized representative has never refuted this. Now questioning the computation without providing any basis/alternative as to what the exact amount is, in case the amount pointed out by Revenue is not correct, is not a plausible argument. The ground lacks merit and is therefore rejected.

10. Now as to whether the appellant **wrongly availed the benefit of notification** or otherwise. I find that the appellant has availed the benefit of notification no. 4/2006-CE dated 1.3.2006, as amended, during the period from 2009 to 31.3.2011. The adjudicating authority has held that the product manufactured by the appellant was not covered under the notification. The appellants contention is that their goods were covered under Sr. No. 62B of the said exemption notification. On going through the notification No. 34/2007-CE dated 2.8.2007, it is observed that the contention is not true Sl. No. 62B inserted by the notification dated 2.8.2007 into notification No. 4/2006-CE dated 1.3.2006, exempts all goods falling under chapter sub heading 30059040. The contention is therefore, rejected being without merit.

10.1 As far as the period from 1.4.2011 to 31.3.2014, is concerned, the appellant availed the benefit of notification No. 1/2011-CE dated 1.3.2011, as amended by notification No. 16/2012-CE dated 17.3.2012. For goods falling under chapter 30, the exemption is for excisable goods, as mentioned below:

> *Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia.*
>
> [emphasis added]

I find that the charge against the appellant is that the goods were not manufactured as per the formulae in the authoritative books and were sold by appellant-1 under their own brand name. It was precisely because of the aforementioned change that I had raised doubts and sought clarification from the advocate as to why certain ingredients which were a part of '*Arya Bhyishak*' were not mentioned as ingredients in the cover of *welzyme syrup*. The advocate was not in a position to give a proper answer. The discussion held during the personal hearing is already mentioned in para 5, *supra* and is therefore not being repeated for the sake of brevity. Inspite of granting 15 days to provide necessary clarifications, nothing has been heard from the appellant's side till date. Inspite of providing ample time, appellant-1, has failed to rebut the allegations of the revenue that the goods were not manufactured as per the formulae in the authoritative books and were sold by appellant-1 under their own brand name. The confirmation of the demand along with interest and imposition of penalty in this respect is upheld.

11. Now moving on to the third question of **valuation of physicians sample**, I find that the appellant was valuing the physician's sample based on manufacturing cost +10%, as was being done prior to 1.3.2013 when the products were brought under MRP. Valuation of physicians sample is no longer res integra. Boards circular and the citation.

relied upon by the adjudicating authority are apt and clearly upholds the stand of the Revenue. The appellants contention that the goods were not sold and therefore, pro rata valuation in terms of Section 4A of the Central Excise Act, 1944, cannot be resorted to is not a tenable argument. The confirmation of demand along with interest, and imposition of penalty in this regard is upheld.

12. Now moving on to the last question, **regarding confirmation of demand in respect of goods clandestinely cleared**. The appellants contention that there was no shortage and it was only a clerical mistake, is clearly an afterthought. The imposition of redemption fine in respect of goods found in excess is also upheld since no proper explanation is forthcoming from the appellant. I also find this to be a fit case for invocation of extended period.

13. In view of the foregoing, the appeal filed by the appellant-1 is partly allowed as far as classification of finished goods is concerned [*refer para 8 supra*]. The findings in the impugned OIO dated 29.3.2016, in respect of the other issues viz. [i]clearance of goods at suppressed value and whether the appellant has wrongly availed the benefit of notification; [ii] valuation of physicians sample and [iii] excess/shortage of finished goods, is upheld.

14. Now moving on to the appeal filed by appellant-2, I find that the primary contention of Shri Arvind L Anand, Manager of appeallant-1, is that he is an employee of the appellant-1 and has no personal involvement in the business; that no penalty is imposable when employee was discharging his duties in accordance with the directions of the employer. The role of appellant-2, as is evident, is that he was the main person who was actively and personally involved in the various aspects of appellant-1. Appellant-2, as the Manager and authorized signatory was the primary man engaged in almost all the activity. In-fact as the impugned order states, he was the person who was handling the issue relating to illicit manufacture and clearance of medicaments manufactured by the appellant; that he put into practice the various ideas regarding evasion of duty floated by the proprietor of appellant-1. Penalty under Rule 26 can be imposed on any person who acquires possession of or is in any way concerned in transporting, removing depositing, keeping, concealing, selling or purchasing or in any other manner deals with any excisable goods which he knows or has reasons to believe are liable for confiscation. Appellant-2 has not countered the charges except for mentioning that he was following the directions of his employer. Further, even the case laws quoted by the appellant, are not relevant because, it is clearly held in this case that the suppression of value of the goods, undervaluation in physician sample and excess/shortage was purely to evade payment of Central Excise duty, which would not have been possible without the appellant-2 playing his part in the scheme.

of things. In view of the foregoing, I find no reason to interfere with the impugned order imposing penalty on the appellant-2.

15. In view of the foregoing, the appeal filed by appellant-2, is rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the appellants stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)

Date : 31.03.2017
Attested

(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.
To,

M/s. LGS Formulations, 5306, Phase-I, GIDC, Vatwa, Ahmedabad- 382 445	Shri Arvind L Anand, Manager M/s. LGS Formulations, 5306, Phase-I, GIDC, Vatwa, Ahmedabad- 382 445

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise Division-III, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-I.
5. Guard File.
6. P.A.