	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(30)/1/Ahd-I/2017-18 / 10h3h to 10h40  
Stay Appl.No. NA/2017-18
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-155&156-2017-18  
दिनांक Date : 16-11-2017 जारी करने की तारीख Date of Issue 06-12-17
- श्री उमा शंकर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Joint Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 16/CX-I/Ahmd/JC/KP/2017  
दिनांक: 3/3/2017, से सृजित
- Arising out of Order-in-Original No. 16/CX-I/Ahmd/JC/KP/2017 दिनांक: 3/3/2017 issued by Joint Commissioner, Central Excise, Ahmedabad-I
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Sunij Pharma Pvt. Ltd. & Shri Jignesh kumar Acharya  
Ahmedabad

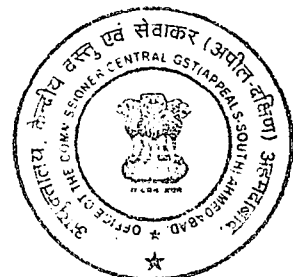
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person 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।
- (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 मामलों 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 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।

(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 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 ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 अनुसूची-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.

- (6) 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 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."



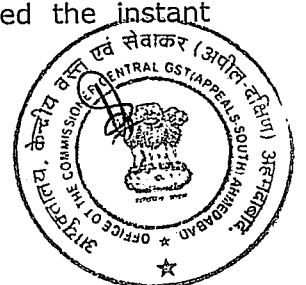
ORDER-IN-APPEAL

M/s Sunij Pharma Pvt Ltd, Vatva, Ahmedabad [appellant-1] and Shri Jignesh Kumar M Charya, Manager Admn of M/s Sunij Pharma Pvt Ltd [appellant-2] has separately filed an appeal against Order-in-Original No.16/CX-1/Ahmd/JC/KP/2017 dated 30.03.2017 [hereinafter referred to as "the impugned order"] of Joint Commissioner of Central Excise, Ahmedabad-1 [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the fact of the case is that the appellant is engaged in manufacturing of PP Medicines. Based on information that the appellant-1 has indulged in evasion of central excise duty by way of adopting incorrect self-assessment, an investigation was initiated against them by the Central Excise Officer. During the course of investigation, it was observed that they had cleared their finished goods to various agencies/distributors and made self-assessment of central excise duty as per Section 4 of CEA instead of Section 4 A of CEA by claiming exemption provided in the Legal Metrology (Packaged Commodities) Rules, 2011 (LMR) on the grounds that the said clearance have been ultimately made to Government agencies. As it observed that the appellant has raised the invoices and cleared the goods to their various buyers/distributors and not to any Government agencies directly, a show cause notice dated 02.12.2015 for the period of 2010-11 to 2014-15 was issued to them, alleging that the assessment of duty for the clearance should have done as per Section 4A of CEA instead of Section 4 of CEA and exemption provided in the LMR is available when the sale is made to "Institutional Consumers or Industrial Customers" ; that the sale made by the appellant neither directly to "Institutional Consumers or Industrial Customers" nor the agencies/ distributors to whom the actual sale has been made by appellant can be termed as Institutional consumers/Industrial consumers as provided under LMR. The said show cause notice proposes for recovery of [i] short payment of duty amounting to Rs.14,65,213/- for the disputed period with interest; [ii] confiscation of goods cleared during the disputed period in terms of Rule 25 (a) and (d) of Central Excise Rules, 2002 (CER); [iii] imposition of penalty/redemption fine under Rule 25 of Central Excise Rules, 2002 (CER); and penalty to Shri Jignesh Kumar M Acharya, Manager of the appellant under Rule 26 of CER.

3. Vide the impugned order, the adjudicating authority has confirmed the short payment amounting to Rs.14,65,213/- with interest; ordered for confiscation of goods valued at Rs.3,86,03,675/- and imposed redemption fine of Rs.14,65,213/- in lieu of confiscation; imposed penalty of Rs.14,65,213/- on the appellant. The adjudicating authority has also imposed penalty of Rs.25,000/- on Shri Jignesh Kumar M Acharya.

4. Being aggrieved, the appellant-1 and appellant-2 have filed the instant appeal on the grounds that:



- As per provisions of LMR, packaged commodities meant for industrial consumers and industrial consumers were excluded from the mandate of declaring MRP; that the adjudicating authority has overlooked the import of the term 'meant' and has wrongly proceeded on the basis that only those goods which were directly purchased by the consumer from the manufacturer were excluded from the mandate of declaring MRP; that in their case, the goods had been purchased by such institutional buyer/industrial consumer through agents of the appellant, hence it was a case where the goods have been directly purchased from them.
- Section 4 A of CEA is not attracted in this case even though MRP may have been declared on such goods because applicability of assessment under Section 4A in respect of any excisable goods is not dependent on the fact whether MRP was declared on packages or not; but the applicability of this provision depends upon the legal requirement for declaring MRP on the goods.
- The exclusion from applicability of chapter-II of LMR is denied on the basis that the goods in question were supplied by the appellant to the buyers and not to institutional consumers directly; that the exclusion is for the goods "meant" for institutional consumers and not confined only to the packaged commodities "directly sold" to the institutional consumers. The explanation under this provisions make it clear that the exclusion of provisions is for packaged commodities meant for institutional consumers and exclusion is applicable when it is established that the packaged commodities were not only meant for the institutional consumers but also actually supplied to the institutional consumers.
- There being no contravention by way of suppression of facts with intent to evade payment of duty on their part, extended period of limitation is invoked without any jurisdiction and without any authority of law; that the goods have been cleared under statutory documents and they were not offending goods liable for any action like seizure confiscation; therefore, penalty/redemption fine imposed is totally wrong.
- The penalty imposed on appellant-2 is wholly illegal and unjustified for the reason that no ground or reason for holding this appellant liable for any penalty is recorded; that personal penalty is not imposable on mere *ipsidixi*, but the grounds and reasons have to be recorded for imposing penalty.
- They relied on case laws in support of their arguments.

5. Personal hearing in both the appeals was held on 14.09.2017 and Smt. Shilpa P Dave, Advocate appeared on behalf the appellant-1 and appellant-2. She reiterated the grounds of appeal and further pointed out the provisions of Rule 2(jj)(k) and 2(q)(i) of the Legal Metrology (Packaged Commodities) Rules, 2011. She further submitted packages of medicines and invoices of the medicines in question to show that their "wholesale packages" are not for retail and only meant for industrial buyers.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing. The main issue required to be decided in the appeal is as to whether the clearance of goods made by appellant-1 to their agencies/distributors for further dispatch of the same to the Industrial consumers, would attract duty under Section 4 or Section 4A of the CEA and also the penalty imposed on them as well as on appellant-2 is correct or otherwise.



7. In the instant case, the appellant-1 has contended that they had cleared the goods which is meant for the Industrial consumers only, through their agencies/distributors under the invoices mentioning "Government Invoice"; that the goods had been ultimately reached to the Industrial consumers but through their agencies/distributors, hence they applied transaction value under Section 4 of CEA, by availing exemption under the provisions of LMR. They also contended that the goods dispatched to their agencies/distributors for further supplies to the Industrial Consumers are not for retail sale but only meant for Industrial buyers. On other hand, the adjudicating authority has held that the exemption provided under LMR is available when the sale is made to "Institutional Consumers or Industrial Customers" directly by the manufacturer and in the appellant-1's case, the sale is neither taken place directly to "Institutional Consumers/ Industrial Customers" nor the agencies/ distributors to whom the actual sale has been made by them can be termed as Institutional consumers as provided under LMR; that merely issuing invoices by mentioning "Government Invoice" does not absolve from the liability of paying appropriate duty.

8. The valuation of PP medicines falling under chapter 30, manufactured by the appellant-1, is covered under the provisions of Section 4A of CEA read with provisions of LMR. From the invoices and packages of medicines, it is clearly evident that the goods were cleared under MRP basis. Provisions of LMR exempt from payment of duty under assessment as per Section 4 A, if such clearance is fulfilled the applicability of Chapter-II, Rule 3 of LMR, which stipulates as under:

### 3. Applicability of the Chapter-

*The provisions of this Chapter shall not apply to,-*

- (a) packages of commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg; and
- (b) packaged commodities meant for industrial consumers or institutional consumers.

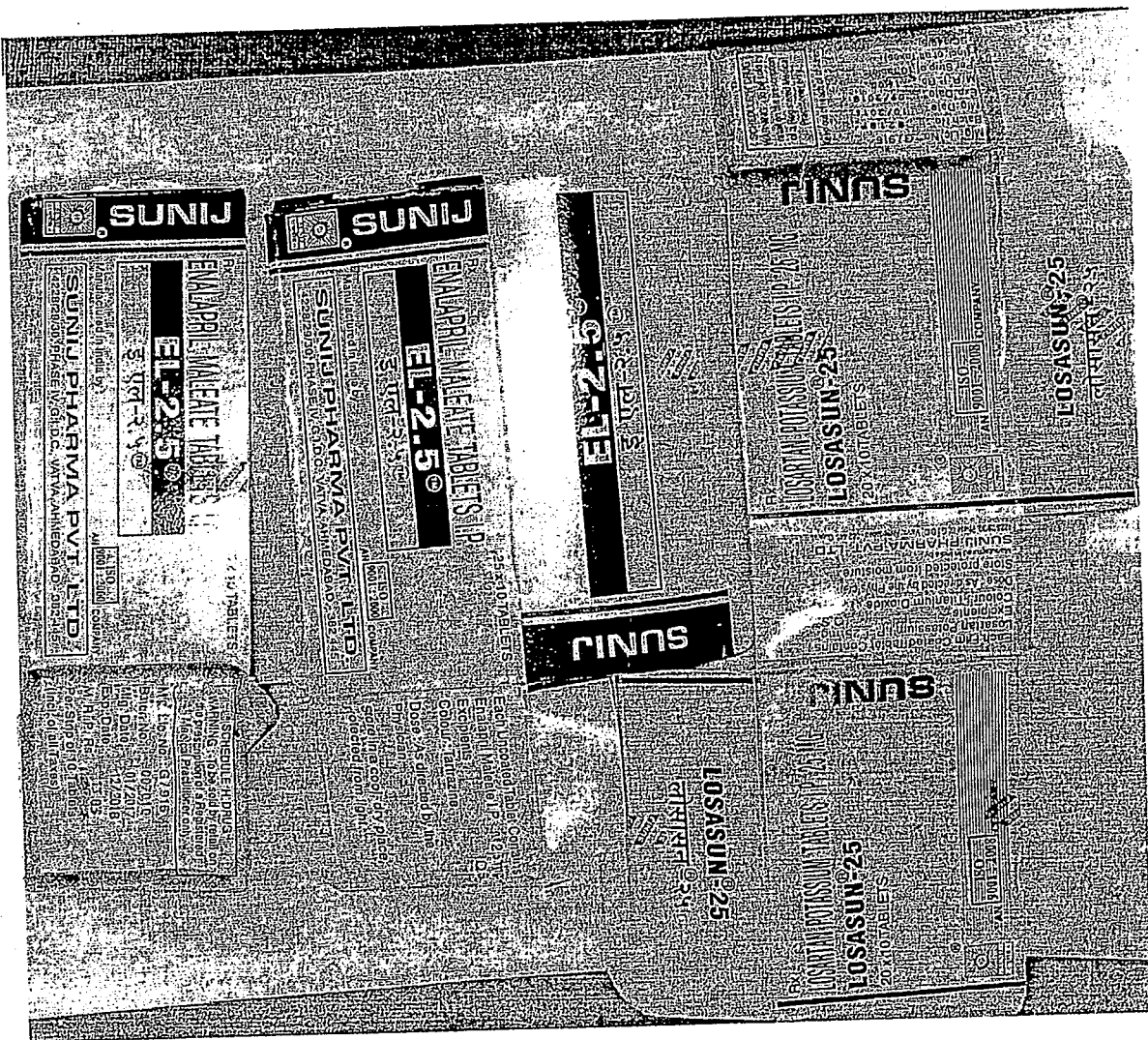
*Explanation :- For the purpose of this rule,-*

- i) "institutional consumer" means the institutional consumer like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution.
- ii) "Industrial Consumer" means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry.

9. From the above, it is very much clear that the provisions of LMR exempts the goods from assessment under Section 4 A, if the appellant-1 clears the goods in dispute directly to "Institutional consumer or industrial consumer". In the instant case, it is not disputed that the appellant-1 had cleared their goods to the agencies/distributors and from the agencies/distributors and further cleared to Institutional/industrial consumers. However, in this context, the appellant-1 has argued that the package of goods cleared to their agencies/distributors clearly shows that the goods in question are not for retail sale but only meant for industrial



buyers. I have perused the packet of sample medicine produced by the appellant-1 at the time of personal hearing. The details printed on the said packet are as under:



I observed that the details printed on the packet of the medicines, said to be meant for distribution to the Institutional/Industrial Consumers, does not show anything relating to "for use only by Industrial or Institutional consumers" or "sales to Government authority" etc. The bulk pack, normally, means that a set of bottles or boxes of tablet which contains 100 tablets or 200 tablets and will be packed in a single package. The bulk pack which are meant for retail sale, normally having pack of bottles having 100 or 200 tablets/ boxes of tablet, having 10 strips of tablets each having 10 tablets and "MRP" is being printed on each bottles/strips/boxes of tablets. The bulk packs which are meant not for retail sales and meant for "Industrial or Institutional Consumers", normally did not have any "MRP" on the bottle/strips. The factual scenario is that though the MRP was declared on the package of medicine, the bottles/strips did not have any MRP instead it is written in the package "not for re-sale" or sale for the concern. While in present case, the bulk pack, the appellant is referring to is meant only for ease of packaging and in a side strips of medicines which are available complete with all details as well as "MRP" printed on this and no any specific remarks as "not for sale" or "sale for Industrial/Institutional Consumers" etc. The so called bulk pack contains individual/single pack which is identical to the pack available to the marked pack for



retail sale. These packs also have "MRP" printed on it. In the circumstances, the contention of the appellant-1 that the package of the medicines clearly shows the sale only meant for Industrial consumers is not correct and baseless.

10. Further, I observe that the appellant-1 has not rebutted with any further documents of agencies/distributors which shows that the clearances in question were only made to Industrial/Institutional consumers. If the impugned goods were meant for supply to "Industrial consumers" under a specified order or contract, in my considered view, it is necessary to mention clearly on the packages that the impugned goods were "for Industrial or Institutional purpose only". While the impugned medicines are clearly for the purpose of assessment under Section 4A of CEA and availing exemption from such assessment for a specified purpose, such endorsement is badly required. This is the reason on which the department sought assessment under Section 4A of CEA which consider merit. Merely showing purchase order of Government institution, invoice mentioning "Government purpose" and certificate issued by the agencies/distributors does not absolve from payment of appropriate duty under Section 4A *ibid*. For the ease of clarity of clearance made by the appellant-1, a sample gist of retail invoice issued by them to their distributor is reproduced below.

No.	Description of Goods	HTSD	Package	Batch No.	Exp. Dt.	MRP	Assess. Months	Qty. Available at Date	Rate (%)	Amount (₹)	Excise Duty (%)	Excise Duty (₹)	Other (%)	Other (₹)	Net Total (₹)
1	10 TAB (CONVENTIONAL) RELEASED	3002270	10 TAB	0407X	JUL-11 JUN-14	18.62	100	28200	10%	2820.00	10%	2820.00	10%	2820.00	3402.00
2	10 TAB (CONVENTIONAL) ELB-S	3002271	10 TAB	0612K	DEC-11 NOV-14	11.87	100	28200	10%	2820.00	10%	2820.00	10%	2820.00	3402.00
3	10 TAB (CONVENTIONAL) ELB-24	3002274	10 TAB	0212K	DEC-11 NOV-13	14.90	100	28200	10%	2820.00	10%	2820.00	10%	2820.00	3402.00
4	10 TAB (CONVENTIONAL) PRO-D TAB	3002276	10 TAB	0105L	MAR-12 FEB-18	33.29	403	13415.87	10%	1341.59	10%	1341.59	10%	1341.59	1675.18
Total											2830	2830	2830	2830	5755.00

Total Ass. Value Rs.: Five Thousand Three Hundred Twenty-Three Only  
 Total Excise Duty Rs.: Three Hundred Twenty-Three Only  
 Total Edu. Cess Rs.: Six Only  
 Total S&H. Cess Rs.: Two Only  
 Invoice Value Rs.: Five Thousand Seven Hundred Sixty-Five Only  
 Tax Type: C.S.T. 2% C  
 Invoice Type: GOVERNMENT INVOICE

All the above facts emerge that the agencies/distributors procure the goods in question from the appellant-1 and supplies the goods to their buyers, including Institutional/Industrial buyers, by adding their profit margin. No specific endorsement has made in the package as well as in the invoice with regard to sale only "industrial/institutional consumers" or "not for retail sale". In the circumstances, the merit of the argument put forth by the appellant-1 fails and





exemption availed by them as per provisions of LMR, by stating that the sale was made to Institutional consumer or Industrial Customers is not correct and assessment of duty for the clearance in question should have done as per Section 4A of CEA instead of Section 4 of CEA.

10. I further observe that the Hon'ble Tribunal, Delhi in case of M/s Unipatch Rubber Ltd [2017 (347) ELT 315], while deciding a issue relating valuation of goods manufactured by a Tyre retreading units, has held that in absence of such endorsement , it cannot be said the goods are cleared for institutional/industrial consumers. The relevant portion is as under:

*"4. We have heard both the sides and perused the appeal records. The Revenue seeks to assess the impugned goods under the provisions of Section 4 on the ground that the product is of such nature, that can be used only by industrial consumer, namely, tyre retreading units. This apparently is the only reason on which the assessment followed by the appellant in terms of Section 4A is sought to be varied. We find that the appellants made categorical assertion, which is not rebutted with evidence, that they have never sold directly to any consumers, leave-alone, Institutional/Industrial consumers. All their sales are to dealers only. We find in such situation the exclusion made under Rule 2A of P.C. Rules is not applicable to the present case. The said Rule defines institutional/industrial consumer who buy package commodities directly from the manufacturers. P.C. Rules will not apply to such transaction.*

*5. Further, we notice that in the present case the impugned goods are cleared in packages of size covered by the P.C. Rules and there is no endorsement on the packages to the affect that the goods are not meant for resale. We note that the Tribunal in the case of H & R Johnson India Pvt. Ltd. - 2014 (306) E.L.T. 645 (Tri.-Mum.) held that in the absence of such endorsement, it cannot be said that the goods are cleared for institutional/industrial consumers. The said decision of the Tribunal has been affirmed by the Hon'ble Supreme Court in 2015 (319) E.L.T. A227 (S.C.) and has been followed in the other decision of the Tribunal in Nitco Tiles v. CCE, Raigad, 2015 (315) E.L.T. 296 (Tri.-Mum.) & SPL Ltd. v. CCE, Rohtak, Final Order No. A/53548/2015-EX. (DB)."*

10. I find that the appellant-1 has relied on various case laws. On perusal of the same, I find that none of the said case laws have any relevancy to the facts of the instant appeal, therefore, not discussed.

11. In view of above discussion, I do not find any merit to interfere the impugned order passed by the adjudicating authority so far as it relates to demand of short payment duty amounting to Rs.14,65,213/- from the appellant-1 for the disputed period with interest . Therefore, I upheld the same.

12. As regards confiscation of goods and penalty, I observe that the adjudicating authority has ordered for [i] confiscation of goods valued at Rs. Rs.3,86,03,675/- and imposed redemption fine of Rs.14,65,213/- in lieu of confiscation; [ii] imposed penalty of Rs.14,65,213/- on the appellant-1 and [iii] Rs.25,000/- on Shri Jignesh Kumar M Acharya, Manager Admin of the appellant-1. The impugned notice alleged that the goods in question were on short payment of duty in contravention of the provisions of CEA and Rules are liable for confiscation under the provisions of Rule 25 of CER and accordingly, the adjudicating authority has imposed redemption fine. In the instant case, the goods were cleared on assessment under Section 4 instead of Section 4A of CEA which resulted short payment. It is a settled law that when



goods are not available for confiscation, redemption fine is not imposable. I rely on decisions viz. [i] *S.S. Watch Industries v. CC (I) New Delhi* - 2011 (274) E.L.T. 369 (Tri.-Del.); [ii] *Commissioner of Customs, Amritsar v. M/s. Raja Impex (P) Ltd* [2008 (229) E.L.T. 185 (P & H)]; [iii] *Kay Bee Tax Spin Ltd.* - 2014 (305) E.L.T. 132; [iv] *Gunjan Exports* - 2013 (295) E.L.T. 733; [v] *Airport Authority of India-2016 (334) E.L.T. 529* (Tri. - Chennai); [vi] *New Drug & Chemical Co.* [2016 (331) E.L.T. 600 (Tri. - Mumbai)]; and *Atul Kaushik*- 2015 (330) E.L.T. 417 (Tri. - Del.). Under these circumstances, I do not find any merit in the order of adjudicating authority with regard to imposition of redemption find in lieu of confiscation and accordingly I set aside the same.

13. Finally, imposition of penalty to the appellant-1 and appellant-2. On going through the facts and evidences available on records, I find that in neither of the documents the fact of routing the goods through the agencies/distributors has been disclosed to the department nor informed the assessment under Section 4 instead of Section 4A adopted by them in the above stated circumstances. As already observed that this was a make belief arrangement made by them to sell the goods covered under the cover of invoice mentioning as "Government invoice" with intention to evade payment of duty, the *mala fide* is writ large on the face. It is only as a result of detailed investigation and scrutiny of the records which resulted in emergence of the real picture. As such, I find no reason to deny the order of the adjudicating authority with regards to imposition of penalty on appellant-1 and appellant-2. Therefore, I upheld the same.

14. In view of above discussion, I upheld the impugned order so as it relates to short payment of duty confirmed with interest and penalty imposed on appellant-1 and appellant-2. However, I set aside the redemption fine imposed on appellant-1.

15. Both the appeals are disposed of accordingly.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स )

Date: 6 /11/2017.

Attested

*Mohanan V.V.*  
(Mohanan V.V)  
Superintendent (Appeal)

By RPAD

To  
M/s Sunij Pharma Pvt Ltd,  
4228-29-30, Phase-IV, GIDC,  
Vatva Industrial Estate, Ahmedabad

Shri Jignesh Kumar M Charya, Manager Admn.  
M/s Sunij Pharma Pvt Ltd,  
4228-29-30, Phase-IV, GIDC,  
Vatva Industrial Estate, Ahmedabad



Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, South
3. The Additional Commissioner, South, Ahmedabad.
4. The Addl./Joint Commissioner, (Systems), CGST, South
5. The Dy. / Asstt. Commissioner, CGST, Division -II South
6. Guard file.
7. P.A



