केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)96&97/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-0141&142-2018-19**
दिनाँक Date : **11-01-2019** जारी करने की तारीख Date of Issue _____ 13/3/2019

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

ग Arising out of Order-in-Original No. **10/CE-I/Ahmd/JC/KP/2018** दिनाँक: **23.06.18** issued by Joint Commissioner, Div-Ahd south, Central Tax, Ahmedabad-South

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

M/S Neon Pharmaceuticals
Harshvardhan trivedi
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, 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 :

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

(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 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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. 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-ORIGINAL

M/s Neon Pharmaceuticals Private Limited, situated at Plot No.508, Phase-II, Near Vinzol Crossing, GIDC, Vatva, Ahmedabad [hereinafter referred to as "appellant-1" and **Shri Harshvardhan R Treivedi**, Director of M/s Neon Pharmaceuticals Pvt Ltd, 508, Phase-II, Near Vinzol Crossing, GIDC, Vatva, Ahmedabad [hereinafter referred to as "appellant-2"] have filed an appeal against Order-in-Original No.10/CE-1/Ahmd/JC/KP/2018 dated 23.06.2018 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner of CGST, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, based on the information that the appellant-1 have indulged in evasion of Central Excise duty by adopting various modus operandi, the factory of premises of them was searched on 06-07/12/2013 and conducted further inquiry/investigation. Scrutiny of documents and further investigation, inquiries conducted from buyers who purchased finished goods from appellant-1 and suppliers of raw materials to the appellant-1 and also from statement of appellant-2 as well as statement of buyers of finished goods/suppliers of raw materials, it revealed that appellant-1 had indulged in large scale evasion of Central Excise duty by way of [i] gross undervaluation of clearances of finished goods , adopting wrong self assessment under Section 4 of Central Excise A ct, 1944 instead of Section 4A of CEA; [ii] wrongly claimed exemption from payment of duty under notification No.08/2003-CE as amended; and [iii] illicit clearance of all excisable goods without payment of central excise duty etc. Investigations further revealed that the appellant had evaded/not paid [i] central excise duty of Rs.51,08,050/- on Medicaments and Bulk drugs for the period of 2011-12 to 2013-14; [ii] Rs.23,71,493/-on pharmaceuticals products baring brand names of others; [iii] Rs.36,196/-on medicaments on the stock of goods found at the time of Panchnama dated 06-07/12/2013; and [iv] Rs.35,236/-collected and not deposited. Since the appellant-1 has contravened various provisions of Central Excise Act, 1944 and Excise Rules, 2002 by evading/not paying above mentioned duty, a show cause notice dated 08.03.2016 for recovery of totally amounting to Rs.75,51,005/- was issued to the appellant-1uner Section 11A (4) of CEA with interest Section 11AB/AA of CEA. The said show cause notice also proposes for confiscation of goods valuing to Rs.9,00,67,467/- under Rule 25 of CER and imposition of penalty under Rule 25 of CEA read with Section 11 AC of CEA. Since the appellant-2 played a key role for omissions and commissions on his part conducting offence by the appellant-1, the show cause notice also proposes for penalty on him under Rule 26 of CER.

2.1 Vide impugned order, the adjudicating authority has uphold all allegations of the show cause notice and confirmed the duty evaded by the appellant-1; imposed penalty equal to the duty amount under Rule 15 of CER read with Section 11 AC of CEA; imposed penalty of Rs.5,00,000/- under Rule 25 of CER. In respect of

appellant-2, the adjudicating authority has imposed Rs.5,00,000/- under Rule 26 of CER.

3. Being aggrieved with the impugned order, the appellant-1 and appellant-2 have filed these appeals on the grounds that:

- The show cause notice is vague and beyond comprehension; that it was not possible to them to submit their appropriate defense against the proposed proceedings covered under the impugned SCN due to the vagueness of the allegations as spelt out in the SCN and hence the impugned order confirming such inappropriate SCN is liable to be set aside.
- The impugned order is non-speaking order; that in their reply to SCN, they have supplied the legal provisions, reasoning thereof supported with pronouncements of various *judicial fora*, however, the adjudicating authority has not considered the same.
- No excise duty is payable on alleged manufacture and sale of bulk drugs; that the invoices of sale of bulk drugs which have found during the course of search and on the basis of which excise duty was proposed and confirmed were merely Performa Invoices which were prepared by them to appraise the private financers about their expansion plans and operation. However, no final invoices were raised.
- The allegation that they procured the raw materials for manufacture of bulk drugs is not correct; that during the course of investigation, no documentary evidences have been brought on record to substantiate that they have procured any of the raw materials actually required for manufacturing of alleged bulk drugs.
- The appellant have not any adequate machinery to manufacture such alleged bulk drugs; that the department have not found any plant and machineries which are required for the purpose of manufacturing such bulk drugs and no documentary evidences have been brought on records to substantiate the allegation. They further contended that the department have not considered the electricity infrastructure available with them and power consumption consumed by the with regards to the alleged manufacture of bulk drugs.
- As per norms of Food & Drug Control Administration and Gujarat Pollution Control Board, a separate permission is required for operating the bulk drug manufacturing unit and medicaments units; that the appellant do not have such permission which clearly stipulates that they never manufactured and cleared alleged bulk drug.
- No excise duty is payable on alleged manufacture and sale of medicaments as no documentary evidences brought on record or discussed in the impugned order substantiating the claim of alleged manufacture/sale of such medicaments.
- They are eligible for SSI Exemption under notification No.08/2003; that the department has wrongly included the value of alleged clearance of bulk drugs during 2012-13.
- They are also eligible for exemption under notification No.01/2011-CE as they have fulfilled all the conditions stipulated under the said notification.
- Penalty not imposable under Section 11AC of CEA read with Rule 25 of CER on appellant-1 and under Rule 26 of CER on appellant -2.The appellant-2 has contended that he was not the Director for the whole periods in dispute.
- They relied on various case laws in support of their arguments.

3. Personal hearing in both the appeals was held on 13.12.2018. Shri Anand Nainawati, Advocate appeared for the same and reiterated the grounds of appeals.

4. I have carefully gone through the facts of the case and submissions made by the appellant-1 and appellant-2 in their appeal memorandum as well as at the time of personal hearing.

5. At the outset, I observe that the appeal in respect of appellant-1 has filed by Shri Harshvardhan Trivedi i.e-appellant-2 in the capacity of erstwhile Director of Appellant-1, as the company was strike off by the Registrar of Companies. He further stated that in circumstances of strike off, he have left with no option but to file the instant appeal on behalf of appellant-1 out of abandoned precautions to preserve and protect the rights of the company (appellant-1). As per his contention, I find that in view of such strike off action by the Registrar of Companies, the company (appellant-1) is legally not in existence and all the Directors of the company now ceased to be directors. In the circumstances, I am of the considered view that the appeal filed by the Director on behalf of the company (appellant-1) is not correct and tenable. He has also not quoted any legal provisions or authority to file appeal in this regard. In view of this, I hold that the appeal filed on behalf of appellant-1 is non maintainable.

6. However, the Director (appellant-2) of the said company (appellant-1) has also filed an appeal against imposition of penalty against him, as it was alleged in the impugned order that he was actively involved in the evasion of Central Excise duty by the appellant-1, I would also like to discuss the issue involved in the appeal of appellant-1 on merit here.

7. I find that during investigation of duty evasion case against the appellant-1, the authority has unearthed that :

[i] the appellant-1 had cleared pharmaceuticals products by declaring assessable value arrived at on their own and not as per mechanism prescribed under notification No.49/2008-CE (NT) dated 24.12.2008; that the value of their goods was far less than the actual assessable value of their finished goods arrived at on the basis of Section 4A of CEA.

[ii] Rs.51,08,050/- on medicaments and bulk drugs cleared during 2012-13 to 2013-14 ;

[iii] Rs.23,71,493/- on Pharmaceutical products bearing brand names of others cleared during 2011-12 to 2013-14.

[iv] Rs.36,196/- on pharmaceuticals products on the stock of goods found at the time of Panchnama dated 06-07/12/2013.

[v] Rs.35,236/- mentioned in the invoices and recovered by the appellant-1 but not deposited to Government Account and need to be recovered under Section 11 D of CEA during 2013.

8. As regards [i] above, I find that the department's allegation is that the appellant-1 has undervalued the goods manufactured by them. The adjudicating authority has confirmed the said allegation vide para 62.1 to 62.6 of the impugned order. The adjudicating authority has held that the appellant had been clearing their finished goods, which were subject to MRP base assessment in terms of Notification No.49/2008-CE (NT) read with Section 4 A of CEA, by adopting their own value and thereby suppressed actual assessable value of their goods which resulted non-payment of central excise duty by way of under valuation of goods. The adjudicating authority has also stated that the demand of Central Excise duty as provided under notification supra is justified on the goods cleared by the appellant-1 for the relevant period. I find that vide Annexures A1 to A3, B1 to B3 and C1 to C3 to the show cause notice, the departmental authority has elaborately mentioned the calculation details of actual MRP value of the pharmaceuticals products cleared by the appellant during the relevant periods. The said Annexures were prepared on the basis of seized documents from appellant-1 and the details mentioned in such seized documents were admitted by appellant-2 in his various statements as correct. It is fact that the goods manufactured by the appellant-1 is subject to assessment for Central Excise duty as per notification No.49/2008-CE (NT) read with Section 4A of CEA. The investigation clearly revealed that the appellant-1 has not adopted the prescribed mechanism as stipulated under the notification supra which result less assessable value than the actual assessable value arrived at on the basis of Section 4A of CEA. The Annexures mentioned above clearly shows difference between the assessable value arrived as per tax invoice of the appellant-1 and actual MRP value of the products to be adopted by the appellant-1as per mechanism prescribed under notification supra and Section 4A of CEA. In the circumstances, I do not find any merit to interfere in the calculation of demand of non-payment of central excise duty on the basis of MRP value of the finished goods manufactured by the appellant-1.

9. As regards [ii] above, I find that the amount of Rs.51,08,050/- is calculated as per Annexure E to the impugned show cause notice in respect of central excise duty not paid/evaded by the appellant-1 on pharmaceuticals products and Bulk Drugs manufactured and cleared by them during the relevant periods. In this regards, the department alleges that [i] the appellant had manufactured bulk drugs and cleared clandestinely without payment of duty and [ii] thereby availed SSI exemption under notification 08/2003-CE wrongly by not including clearance value of such bulk drugs clandestinely.

9.1 As regards manufacturing and clearance of bulk drugs, it was alleged by the department that the appellant had manufactured and cleared bulk drugs to various parties in 17 invoices during 2012-13 valued at Rs.3,28,77,000/- without payment of central excise duty; that the said invoices were recovered by the investigating

authority during the search of the factory premises of the appellant-1. The appellant-1 put forth the argument that they were not having any adequate facility like specified area, machinery, permission from Pollution Board, license to manufacture such bulk drugs from Food & Drug Control Administration and moreover, they never purchased any raw materials required for manufacturing of alleged bulk drugs. It is an admitted fact on records that 17 invoices showing clearance of bulk drugs were recovered from the factory premises of the appellant-1. It is the contention of the appellant-1 that the said invoices were proforma invoices which were prepared to impress their financiers. This argument is baseless and not acceptable and also contrary to their above stated argument that they were not having any facility/machinery, or permission from Pollution Board, license to manufacture such bulk drugs and they never purchased any raw materials for the manufacture of such bulk drugs. The said argument is just only an imaginary. It is not an acceptable fact that a reputed company like appellant-1 makes a preforma invoices, showing false manufacturing/clearance of bulk drugs just to impress their financiers. Further, I find that the investigating authority has recorded statements of various parties, who supplied inputs/raw materials of to the appellant-1 for the manufacture of such finished goods. The investigating authority has also recorded statements of the buyers/purchasers of finished goods. All these facts supported the facts that they had manufactured and cleared bulk drugs and the assertions made by the appellant-1 is hypothetical and only to escape payment of central excise duty in respect of such goods cleared clandestinely.

9.2 As regards wrong availment of SSI exemption benefit by not including the value of Bulk Drugs cleared by the appellant-1 during 2012-13, I find that Annexure-E to the show cause notice clearly elaborated the calculation of duty evaded by them without showing the value of Bulk Drugs cleared in the value of pharmaceutical products. Since it is very much established that the appellant-1 had manufactured and cleared bulk drugs, as discussed in above para and there is no reasons to doubt the authenticity of 17 tax invoices showing the clearances of such goods as discussed in above para, I do not find any infirmity in respect of demand of Rs. Rs.51,08,050/-. Hence, I uphold the same.

9.3. As regards [iii] above, regarding non-payment of central excise duty amounting to Rs.23,71,493/- on Pharmaceutical products bearing brand names of others cleared during 2011-12 to 2013-14, I find that the departmental authority has calculated the non-payment duty as per Annexure-E to the show cause notice on the basis of work sheet prepared as per Annexure B1, B2 and B3 of the show cause notice. It is an admitted fact that the appellant-1 had manufactured and cleared excisable goods being brand name of others which attracted central excise duty from the first clearances, as assessable value of such goods are out of the purview of SSI exemption. Investigation of the case against the appellant-1 clearly

revealed that they had cleared such branded goods to various parties as per annexures mentioned above and the statement of such buyers also clearly indicated this fact. Further, the appellant-1 has also not disputed the allegation of the department in this regard. Therefore, the duty demanded is proper and correct.

10. In respect of demand of Rs.36,196/- on pharmaceuticals products on the stock of goods found at the time of Panchnama dated 06-07/12/2013, as mentioned at Sr.No.[iv] above, I find that the details of calculation of duty has mentioned in Annexure G to the show cause notice. Since the appellant-1 has not disputed these facts and not put forth any argument in this regard, I do not find any merit to interfere the confirmation of said demand.

11. Finally, as regards Rs.35,236/- mentioned at [v] above, in respect of duty recovered from the buyers and not deposited to Government Account, I find that the details of such amount is detailed in annexure-H to the show cause notice. As per details mentioned in the said annexure, I find that the appellant-1 has recovered duty of Rs.35,236/- from their buyer and not deposited into Government Account. As per provisions of Section 11 D of Central Excise Act, 1944, any duty collected from the buyer are required to be deposited in Government Account. Since the appellant-1 has not disputed the said fact, I do not find any merit to interfere the confirmation of the said demand.

12. The appellant-1 further argued that they are also eligible for exemption under Sr.No.37 of notification No.01/2011-CE dated 01.03.2011as they have fulfilled all the conditions stipulated under the said notification. The said notification provides concessional rate of duty @1%/2%, provided the appellant-1 does not avail the facility of Cenvat Credit. Looking into the facts of the case discussed above and the conditions to be fulfilled as per the notification supra, I do not find any merit in the argument of apapellant-1. I find that there was no intention on the part of the appellant-1 to avail the benefit of notification. They were availing benefit of SSI exemption notification by not availing the benefit of Cenvat credit scheme. From the foregoing discussion, it is revealed that the modus operandi adopted by the appellant-1 by not including assessable value bulk drugs manufactured and cleared by them was unearthed by the departmental authority, which result the outcome of short payment of central excise duty. It is an afterthought argument of them that they eligible for availing the benefit of notification supra. If the department did not search their premises and not unearthed the modus operandi adopted, the never come up with such argument. It is disgusting to know that how such a concession can be given to an evader who did not follow the procedure prescribed under excise law. They resorted to clandestine removal and no records were maintained/duty was paid in respect of such clearance. Therefore the duty

evaded transactions which have never seen the light of the day deserve no concessional rate of duty at all. If such benefit is granted, that shall legalise illegalities. Further, the Sr.No.37 of the said notification provides concessional rate of duty to only goods falling under chapter 30 and manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs & Cosmetic Act etc as specified in the said notification. In the instant case, the appellant-1 has manufactured goods falling under chapter 29 also. Further, they manufactured and cleared medicaments under chapter 29 and 30 under their brand name and brand name owned by others and not under the name as specified in the authoritative books specified in the said Act etc. Therefore, the contention of the appellant-1 is not correct and acceptable.

13. I find that the appellant-1 has relied upon plenty of case laws of Hon'ble High Court/Tribunal with a content that the onus to prove clandestine removal is on the department which they have to prove by producing evidence to clandestine manufacturing, un-accountant draw material receipt, sales, buyers to whom goods cleared, transportation and electricity consumption etc. In respect of clandestine activity involving suppression of production and clandestine removal, the entire facts and circumstances of the case have to be looked into case to case basis. In the instant case, I find that the departmental authority has clearly proved the act and omission on the part of the appellant-1, in respect of illicit manufacturing and clearance of medicaments and bulk drugs during the relevant periods. Statements of Director of appellant-1, buyers of finished goods/suppliers of raw material of them and Annexures made on the basis of records seized during investigation clearly supported/showed the facts the under valuation of goods and clandestine removal thereof. Therefore, I do not find any merit in applying ratio of the decision relied on by the appellant-1 in the instant case.

14. In view of above, I uphold the demand confirmed by the adjudicating authority against appellant-1. As regard the penalty imposed on appellant-1, I do not find any merit to interfere the penalty imposed under Rule 15 of CCR read with Section 11 AC of CEA and Rule 25 of CER, looking into the facts and apt of the case discussed hereinabove.

15. Now, I take the appeal filed by the appellant-2 regarding imposition of penalty. I find that the adjudicating authority has imposed penalty of Rs.5,00,000/- under Rule 26 of Central Excise Rules, 2002. I find that his involvement in undervaluation of goods and clandestine removal by appellant-1 has surfaced when investigation brought out his confessional statement which remained unretracted at any point of time. Further, in view of discussion in above paras, his conscious knowledge and involvement in evasion came to record without any doubt. Having perpetuated illegality and resorted to evasion deliberately, he is not immune from

penalty imposed on him. He contended that he was not the Director for the whole periods in dispute under which the duty demanded; that he taken over the directorship on 15.09.2012, whereas the period covered in the instant issue is from 2011 to 2014. Looking into the quantum of penalty imposed against duty evaded, I do not find any merit in the said argument and I uphold the penalty imposed by the adjudicating authority against appellant-2.

16. In view of above discussion, I reject the appeal filed by the appellant-1 and appellant-2 and uphold the impugned order passed by the adjudicating authority. Both the appeals stand disposed of accordingly.

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .1.2019

Attested

(Mohanan V.V)
Superintendent (Appeal),
Central Tax,Ahmedabad.

By RPAD.

To,
M/s Neon Pharmaceuticals Private Limited,
Plot No.508, Phase-II, Near Vinzol Crossing,
GIDC, Vatva, Ahmedabad

Shri Harshvardhan R Treivedi,
Director of M/s Neon Pharmaceuticals Pvt Ltd,
Plot No. 508, Phase-II, Near Vinzol Crossing,
GIDC, Vatva, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Joint Commissioner, CGST, Ahmedabad, South
4. The Assistant Commissioner, System, CGST, Ahmedabad South
5. The Assistant Commissioner, CGST, Dn.III, Ahmedabad South
6. Guard File.
7. P.A.