



सत्यमेव जयते

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



### स्पीड पोस्ट

- क फाइल संख्या : File No : V2(30)59/Ahd-South/2019-20 / 14289 to 14293
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-108-2019-20**  
 दिनांक Date : **27-02-2020** जारी करने की तारीख Date of Issue 16/03/2020  
 आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/06//AC/Div-III/18-19** दिनांक: **06.05.2019** , issued by  
 Assistant Commissioner, Div-III, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**LGS Formulations**  
**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) केंद्रीय 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 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.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

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

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 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

This appeal has been filed by M/s LGS Formulations, 5306, Phase-IV, GIDC, Vatva, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No. MP/06/AC/Div III/18-19 dated 06.05.2019 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacturing of Ayurvedic Medicine. They were issued with Show Cause Notices on 27.02.2015, 01.05.2015, 23.06.2016 and 05.10.2017. Subsequently, a periodical Show Cause Notice dated 29.05.2018, for the period pertaining from May 2016 to June 2017, was issued to them, *inter alia*, alleging that:

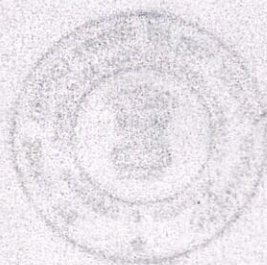
- [a] they had wrongly classified their goods under Central Excise Tariff sub heading 30039011 instead of 30049011;
- [b] that they had wrongly availed benefit of Exemption Notification No. 1/2011-CE 11 amended by Notification No. 16/2012-CE dated 17.3.2012 and paid duty @ 2.06% on excisable goods manufactured and cleared by them during the relevant period; that they were supposed to pay Central Excise duty at the tariff rate being in force at the relevant time;
- [c] that for arriving at the assessable value of the physicians sample of Ayurvedic medicaments manufactured and cleared by them, they have wrongly arrived value on the manufacturing + 10% instead of correct valuation arrived at Section 4A (MRP based Valuation) of the Central Excise Act, 1944

Based on the above allegations, the said show cause notice, therefore, [i] demanded central excise duty of Rs. 39,46,402/- + Rs.2,24,672/- along with interest; [ii] proposed penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC (1)(a) of the Central Excise Act, 1944; [iii] proposed to confiscate the excisable goods cleared during the relevant period ; [iv] and proposed to classify their goods under 30049011.

3. The adjudicating authority, vide the impugned order, held that:

- (i) the ayurvedic medicines manufactured by the appellant is classifiable under CETSH No 30039011;
- (ii) the appellant wrongly availed the benefit of Exemption Notification No. 1/2011-CE dated 1.3.2011 as amended by Notification No. 16/2012-CE dated 17.3.2012
- (iii) differential Central Excise duty amount of Rs. 39,46,402/- is liable to be recovered along with interest;
- (iv) they should have cleared the physician samples on MRP value as per Section 4A of the CEA '44 and Rs,2,24,672/- short paid on clearance of physical samples is also liable to be recovered along with interest.

The adjudicating authority has further imposed penalty amounting to Rs.2,24,672/- on the appellant. He further held the goods to be liable for confiscation but refrained from imposing any redemption fine as the goods were not seized and not provisionally released at the relevant point time and was not available at the time of adjudication.



4. Aggrieved with the impugned order, the appellant has filed this appeal on the grounds that:

(a) the adjudicating authority, rejecting the benefit of exemption Notification 01/2011-CE as amended by Notification No.16/2012-CE supra is an action without jurisdiction;

(b) the adjudicating authority has rejected the benefit of the said Notification on the grounds that the product manufactured by them were sold in the market in their own trade names and not in the names specified in 1<sup>st</sup> Schedule of the Drugs and Cosmetics Act or Pharmacopoeia; that he failed to appreciate that the label of the products carried with it the composition wherein names in the specified books were incorporated in the label; that the said Notification has been amended by Notification No.01/2013, wherein the goods under different brand name are permitted for benefit of concessional rate of duty.

(c) the adjudicating authority has listed the ayurvedic medicaments manufactured by the appellant with the details of ingredients use therein, and on the basis of such published ingredients, the adjudicating authority has concluded that the medicaments manufactured by the appellant were in *measured doses*;

(d) 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;

(e) no proceeding have been initiated against any of the other manufacturer of similar products like the appellant; that singling out the appellant for rejecting concessional rate of duty is a gross case of injustice and discrimination.

(f) the duty demand of Rs. 2,24,672/- for physician sample is ex facie illegal & void; that the Hon'ble High Court of Gujarat in the case of M/s Tuton Pharmaceuticals [2018 (360) ELT 33 (Guj) ] has held that Excise Duty on samples can only be levied under Section 4 and never can levied under Section 4 A; that the appellant has paid the Excise Duty for such samples on the sum total of the cost of the raw materials, manufacturing cost and 10% profit thereon; but the department has contended that it should be arrived on MRP basis since the medicaments are notification under Section 4A for the purpose of MRP based assessment.

(g) that in the present case, however 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;

(h) that no justifiable reason or ground has been given for imposing penalty on the appellant; that where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against the appellant there is no justification in the imposition of penalty in law as well as in facts;



(i) that the action of ordering recovery of interest under Section 11AA is without any authority in law in as much as the provision of section 11A is not attracted in the instant case;

5. Personal hearing in the matter was held on 04.02.2020. Shri Aditya S Thripathi, Advocate appeared on behalf of the appellant and reiterated the submissions made in Appeal Memorandum.

6. I have carefully gone through the facts of the case, submissions made in Appeal Memorandum as well as oral submissions made during Personal Hearing. It is observed that the issue to be decided in the matter is as follows:

[a] Whether the appellant is eligible for benefit of notification No. 1/2011-CE dated 1.3.2011 as amended by notification No. 16/2012-CE dated 17.3.2012; and

[b] Whether the physician's sample manufactured and cleared by the appellant were correctly assessed for duty payment.

7. It is observed that the instant Show Cause Notice is periodical nature. The principal Show Cause Notice in the case was already decided by the Commissioner (Appeals), Ahmedabad, vide Order-in-Appeal No.AHM-EXCUS-001-APP-090 & 091-2016-17 dated 31.03.2017. Hence, the findings of Commissioner (Appeals) apply mutatis mutandis in this case also. Now, I take the issue in seriatim.

8. As regards [a] above, I find that the adjudicating authority has held that the appellant had wrongly availed the benefit of the subject notification during the relevant period for which they were liable to pay differential duty of Rs.39,46,402/-. As per Notification supra, for the goods falling under chapter 30 (Sr.No.37 of the Notification), the exemption for excisable goods is 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 adjudicating authority had denied the benefit of concessional rate of duty under Notification *ibid* to the appellant on the grounds that they were not manufactured the goods as per the formulae in the authoritative books namely "Aryabhishak" and were sold under their own brand name. The Notification supra, specifically stipulates that the medicaments manufactured exclusively in accordance with the formulae described in the authoritative books i.e "Aryabhishak" which is one of the authoritative books specified in the first schedule to the Drugs & Cosmetics Act, 1940 and sold under the name as specified in such books are entitled for concessional rate of duty. In the impugned order, at para 16.4, the



adjudicating authority has vehemently contended with product name viz. 'Acnovan Syrup' that the ingredients which were a part of 'Arya Bhyishak' were not mentioned as ingredients in the cover of the said product. The contention of the adjudicating authority that the product sold under the brand name "Acnovna" is not mentioned in the authoritative book "Aryabhishak" specified in said Schedule is neither disputed by the appellant nor not put forth any counter submission.

8.1 Further, I find that the Commissioner (Appeals), vide his OIA No.AHM-EXCUS-001-APP-090 & 091-2016-17 dated 31.03.2017 and AHM-EXCUS-001-APP-347 & 348-2017-18 dated 23.02.2018 has decided the issue in appellant's case for the previous periods. In the said OIAs, the Appellate Authority had denied the benefit of Notification supra, by taking the same ground as discussed above. Accordingly, I find that in terms of notification supra and above discussion thereof, the appellant is not eligible for the benefit of the Notification in dispute. Hence, I find that the adjudicating authority has correctly disallowed the benefit of the notification to the appellant and the confirmation of the demand amounting to Rs.39,46,402/- along with interest in this respect is upheld.

9. As regards [b] above i.e in respect valuation of physician's sample, I find that the adjudicating authority has held that the appellant is liable to pay duty on MRP value as per Section 4A of the Central Excise Act, 1944 at Tariff Rate as they are not eligible for the benefit of the Notification No. 1/2011-CE dated 1.3.2011, as amended by notification No. 16/2012-CE dated 17.3.2012. He also relied on Board's Circular No.813/10/2005-CX dated 25.04.2005 and Hon'ble CESTAT's order in the case of M/s Blue Cross Laboratories [2006 (202)ELT 152 (LB-Mum)]; Mumbai High Court's decision in the case of M/s Indian Drugs Manufacturere's Association [2008 (222) ELT 0022-Bom] and Chennai Tribunals decision reported in 2012-TIOL-570-CESTAT-MAD. In this regard, I find that recently, the Hon'ble High Court of Gujarat has decided similar issue in the case of M/s. Tuton Pharmaceuticals [2018 (360) ELT 33 (Guj) ]. In the said case, the Hon'ble High Court decided two questions of law [a] vires of Section 4A of the Central Excise Act, 1944; and [b] question of levy of duty on free samples provided to the doctors. The Court held as follows: [relevant extracts only]

*38.This brings us to the question of levy of duty on free samples provided to the doctors. There is no dispute that such samples provided to the doctors by way of marketing strategy are not charged. As per sub-rule (1) of Rule 96 of the Drugs and Cosmetic Rules, it is mandatory for the supplier that on such drugs intended for distribution to the doctors as free samples, the container must carry a label providing that "Physician's sample-Not to be sold". Thus, two things are firmly established. First that the samples were provided by the petitioners free of cost to the medical professionals and that such samples are not for sale in the market. In this context, if we peruse section 4A of the Act, as per sub-section (2) thereof for the goods notified under sub-section (1) which are excisable goods and are chargeable to duty of excise with reference to value instead of providing the formula for computing duty under section 4 the same would be charged on the retail sale price declared on such goods less abatement provided by the Government. For various reasons with respect to the free samples, sub-section (2) of section 4A would not apply. The free samples provided to the doctors are not chargeable to duty with reference to value since they do not carry any value. Free*



*samples provided to the doctors do not carry any retail sale price. Under sub-section (1) of section 4A itself, the Central Government can notify goods in relation to which, under the provisions of the Standards of Weights and Measures Act or the rules made there under, it is necessary to declare on package, the retail sale price of such goods. The free samples provided to the doctors on the contrary contain necessary declaration required under the law that the samples are free of charge and are not for sale in the market. The very first requirement of sub section (1) of section 4A of the Act in such a case fails. For such reasons duty of excise cannot be levied on such free samples in terms of section 4A of the Act. The fallacy of the stand of the respondents that even in such cases, the excise duty would be levied in terms of section 4A would be exposed further when we notice that even in such cases for valuation of the samples Rule 4 of the Valuation Rules of 2000 is sought to be resorted to. The said Valuation Rules of 2000, in plain terms, would not apply to a case covered under section 4A of the Act. Firstly, Clause (c) of Rule 2 defines the term "value" as to mean value referred in section 4 of the Act. Further Rule 3 provides that the value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with the said Rules. Rule 5 applies to the case where excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 the Act except in the circumstances in which excisable goods are sold for delivery at a place other than the place of removal. Rule 6 applies where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except where the price is not the sole consideration for sale. There are other Rules which also refer to the various situations envisaged in section 4 of the Act. From such provisions, it is absolutely clear that the Valuation Rules of 2000 would apply in a case where the duty of excise is levied under section 4 of the Act. The respondents cannot seek to levy duty under section 4A but apply the method of computation of the value of the goods which is devised for the purpose of section 4 of the Act. Clarificatory instructions dated 25.04.2005 do not lay down correct position in law.*

40. In the result, these petitions are disposed of with following directions:

1. The petitioner's challenge to the vires of section 4A of the Act fails.
2. It is clear that the excise duty on the doctors' free samples can be levied only under section 4 of the Act and not under section 4A.
3. Any instructions and directions to the contrary is set aside.

9.1 In view of the above judgement of the Hon'ble High Court of Gujarat, the finding of the adjudicating authority that the appellant is required to pay duty on MRP value as per Section 4A on free samples cleared by them is legally not tenable and is therefore set aside. Further, I find that the adjudicating authority in his findings has held that the appellant was clearing the physicians sample at value arrived by adding the manufacturing cost +10%. It is also mentioned that the appellant was availing the benefit of notification no. 1/2011-CE dated 1.3.2011 amended by Notification No.16/2012-CE dated 17.3.2012. I have already held supra that the appellant is not eligible for the benefit of the notification. Hence, it would be appropriate to remand back the matter only for the limited purpose of determining the value of the physicians sample based on the aforementioned judgement of the Hon'ble High Court of Gujarat. Accordingly, the duty will be determined by the adjudicating authority subsequent to determining the valuation part of the physician's samples.

7. In view of the foregoing, I decide that [a] the appellant is not eligible for the benefit of notification No. 1/2011-CE dated 1.3.2011 as amended by notification No. 16/2012-CE dated 17.3.2012; that the confirmation of demand of Rs. 39,46,402/- is upheld along with interest; [b] confirmation of the demand





amounting to Rs. 2,24,672/- along with interest in respect of physician's sample, is set aside and the matter is remanded back to the adjudicating authority for determination of value in terms of the judgement of the Hon'ble High Court of Gujarat in the case of M/s Tuton Pharmaceuticals. The duty along with interest & penalty will be determined by the adjudicating authority subsequent to determining the valuation part of the physician's samples.

8. The appeal filed by the appellant stands disposed of in above terms.

*Akhilesh Kumar*  
(Akhilesh Kumar)  
Commissioner (Appeals)  
/02/2020

Attested

*Mohan V.V*  
(Mohan V.V)  
Superintendent (Appeals),  
CGST, Ahmedabad.



By RPAD.

To,  
M/s. LGS Formulations,  
5306, Phase-IV,  
GIDC, Vatwa, Ahmedabad- 382 445  
Copy to:-

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

