

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal Nos.40682 and 40684 of 2014

(Arising out of Order-in-Appeal No. 8 to 12/2014 (P) dated 6.1.2014 passed by the
Commissioner of Central Excise (Appeals), Chennai)

M/s. Sun Pharmaceuticals Industries Ltd.

Sathammal Village, Karunkuzhi Post
Madhuranthagam Taluk
Kancheepuram District – 603 303.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
12th Main Road, Anna Nagar
Chennai – 600 040.

Respondent

APPEARANCE:

Shri Ashok B. Nawal, Consultant for the Appellant
Smt. O.M. Reena, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos.40939 & 40940/2023

Date of Hearing : 16.10.2023
Date of Decision: 19.10.2023

Per M. Ajit Kumar,

Both these appeals are filed against common Order in Appeal No. 8 to 12/2014 (P) dated 6.1.2014 passed by the Commissioner of Central Excise (Appeals), Puducherry.

2. Brief facts of the case are that the appellant had been clearing the goods 'Danazol' without payment of duty by claiming exemption under Sl. No. 47A of the Notification No. 4/2006-CE dated 1.3.2006. However, the department felt that the impugned goods would get covered under Sl. No. 47B of the said Notification according to which

when the goods are used elsewhere other than the factory of production, exemption shall be allowed only if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed. Since the appellant had cleared the product 'Danazol' to other manufacturers like M/s. Arvind Remedies without following the above Rules, it appeared that the appellant was not eligible for exemption under Notification No. 4/2006-CE *ibid*. Therefore, two Show Cause Notices covering the period from April 2009 to March 2010 were issued to the appellants denying the exemption. After due process of law, the adjudicating authority *vide* the Order in Original confirmed the duty demands and also imposed penalties equal to the duty demands. Aggrieved by the said orders, appellant filed appeals before Commissioner (Appeals), who *vide* the common impugned order upheld the duty while setting aside the penalties. Aggrieved against the duty demand, the appellant is now before the Tribunal.

3. No cross-objection has been filed by the respondent-department.
4. We have heard Shri Ashok B. Nawal, Consultant for the appellant and learned Smt. O.M. Reena, ADC (AR) for the Respondent.
5. Shri Ashok B. Nawal, learned consultant for the appellant submitted that the Appellant cleared product 'Danazol' to Arvind Remedies Silvassa without payment of duty by claiming exemption under Notification No.04/2006, under Sl.No.47 (A) of Notification 4/2006-CE with NIL rate of duty without fulfilling any condition. However, the benefit of the said notification was denied to them by the Ld. Commissioner (Appeals) *vide* the impugned order as he was of the opinion that the product Danazol being a 'bulk drug' would be covered

under Sl. No. 47B of Notification No. 4/2006-CE and not under Sl. No. 47A ibid claimed by the appellants, as the heading covered only 'drugs or medicines'. While goods falling under Sl. No. 47A are exempt from duty unconditionally, goods falling under Sl. No. 47B are exempt from duty subject to fulfillment of certain conditions, which the appellant failed to meet, whereby the impugned order has confirmed the demand for duty while setting aside the penalties. The consultant has relied on the following judgments of the Tribunal in support of his stand that the term 'drug' has to be considered to include 'bulk drug' and the impugned goods are entitled for the benefit of the Notification 4/2006-CE dated 1.3.2006 under Sl. No. 47A. He prayed that the impugned order may be set aside with consequential relief.

- a. Aurobindo Pharma Ltd. Vs. CCE, Hyderabad reported in 2009 (247) ELT 206 (Tri. Bang.)
- b. Astrix Laboratories Ltd. Vs. CCE, Hyderabad reported in 2009 (233) ELT 372 (Tri. Bang.)
- c. Dr. Reddy's Laboratories Ltd. Vs. CCE, Hyderabad reported in 2010 (251) ELT 447 (Tri. Bang.)
- d. CCE, Hyderabad Vs. Hetero Drugs Ltd. reported in 2010 (262) ELT 490 (Tri. Bang.)

6. Learned AR Smt. O.M.Reena has taken us through the Order in Appeal and stated that 'bulk drug's fall under Sl. No. 47B of Notification No.4/2006-CE dated 1.3.2006. The exemption is conditional to the appellant following certain procedure which they have failed to comply with. Hence the appeal has been rightly rejected by the Commissioner (Appeals) and the same may be upheld.

7. We find that this is a case where two appeals have been filed by the appellant covering the following Order in Original as shown in the Table below:-

S. No.	Appeal No. / Date	Order in Original No. / Dt.	Amount of duty & penalty (In Rs.)	Period Involved	Remarks
1.	133/2011 (P) dt. 23.8.2011	16/2011 dt. 30.5.2011	Duty: 4,35, 147/- Penalty: 4,35,147/	April 2009 to Sept. 2009	Show Cause Notice were issued denying the benefit of Sl. No. 47A, Notification No.4/2006-CE dated 1.3.2006
2.	134/2011 (P) dt. 23.8.2011	17/2011 dt. 30.5.2011	Duty: 1,50,663/- Penalty: 1,50,663/-	Oct. 2009 to March 2010	
3.	95/2011 (P) dt. 8.7.2011	13/2011 dt. 29.4.2011	Duty: 4,95,610/- Penalty: 4,95,610/-	April 2009 to June 2009	Show Cause Notice were issued allowing exemption of Sl. No. 47A, while requiring the appellant to reverse the input credit in terms of Rule 6(3) of CCR, 2004
4.	155/2011 (M-III) dt. 1.8.2011	15/2011 dt. 30.5.2011	Duty: 1,25,000/- Penalty: 1,25,000/-	March 2010	
5.	156/2011 (M-III) dt. 1.8.2011	14/2011 dt. 30.5.2011	Duty: 4,58,594/- Penalty: 4,58,594/-	July 2009 to Feb. 2010	

8. Two issues arise for consideration:-

(i) Whether the product 'Danazol' which is a 'bulk drug' would fall under Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006 or it has to be considered as 'drug or medicine' which falls under Sl. No. 47B of the said Notification.

(ii) In case the goods fall under Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006 and are unconditionally exempted, whether the common input credit used in the exempted product would be reversible / duty payable to the percentage of value of the exempted goods as per Rule 6(3) of CENVAT Credit Rules, 2004.

9. We find that the issue at Sl. No. (i) as to whether 'Danazol' is eligible for the exemption under Sl. No. 47A of Notification No.4/2006-CE is no longer res integra as has been decided by host of judgments of this Tribunal stated by the appellant and listed above. The judgments have held that since the term 'bulk drugs' and 'drug and medicines' have not been defined in the Notification, the definition as per Drugs (Price Control) Order, 1995 is relevant. As per Drugs (Price

Control) Order, 1995, the term 'drug' have been defined to include 'bulk drug' and formulations. Thus, the said judgments put in mathematical terms could be understood as meaning that while 'drug' is a superset, 'bulk drugs' is the subset, whereby 'bulk drugs' are covered by the term 'drugs'. Hence, it is for the appellant to choose which ever Sl no of the exemption is more favourable to him. Judicial discipline requires us to follow the ratio of the above judgments. We hence find that the appellant is entitled to the benefit of unconditional exemption from tax as per Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006.

10. As regards the second issue, it is seen that the department had followed a two-pronged strategy. Initially Show Cause Notices were issued to the appellant denying unconditional exemption for 'Danazol' under Sl. No. 47A of Notification No.4/2006-CE. Subsequently, they took the stand that the appellant is entitled for the benefit of Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006, however, the appellant is required to reverse the credit/ pay the amount demanded as a percentage of sale value of the exempted goods 'Danazol', as per law during the relevant period, under Rule 6(3) of CENVAT Credit Rules, 2004. We find that there has been some confusion in the minds of the department and they have blown hot and cold on the same issue at different points of time. Now that we have held that the appellant is eligible for the exemption under Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006, the goods are unconditionally exempt from payment of duty. We find that the appellant has also stated in the reply to the Commissioner (Appeals) as recorded at para 18 of the impugned order that they have already reversed the CENVAT credit involved on

'Danazol'. That being so, we find that the exemption has been correctly availed by them. We however permit the department to verify the mathematical accuracy of the claims of reversal made by the appellant and demand the excess credit taken or refund the excess reversal of credit made by the appellant if any. Needless to say that in case of a demand, the appellant may be given an opportunity to explain the reversal of credit made by them.

10. We accordingly set aside the impugned order and allow the appellant the benefit of Sl. No. 47A of Notification No. 4/2006-CE dated 1.3.2006 for the product 'Danazol'. Credit reversed by the appellant under Rule 6(3) of CENVAT Credit Rules, 2004 is subject to verification by the department as mentioned above. Appeals are disposed of on the above terms.

(Pronounced in open court on 19.10.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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