



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2(30)51/AHD-III/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-0172-17-18

दिनांक Date : 27.12.2017 जारी करने की तारीख Date of Issue: 17-1-2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
21/D/2007-08 दिनांक : 25.01.2008 से सृजित

Arising out of Order-in-Original: 21/D/2007-08, Date: 25.01.2008 Issued by: Deputy Commissioner, Central Excise, Div:RRA, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. M/s Daywell Pharmaceuticals Pvt Ltd

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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

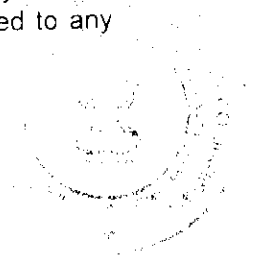
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 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.

(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 हैं।

(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.

ध 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- ए0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघाणी नगर, अहमदाबाद-380016.

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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

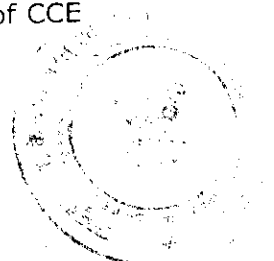
This appeal has been filed by M/s Daywell Pharmaceuticals, Plot No.3491, GIDC Estate,, Phase-IV, Chhatral, Taluka-Kalol, Dist. Gandhinagar [hereinafter referred to as the appellant] against Order-in-Original No.21/D/2007-08 dated 25.01.2008 [impugned order] passed by the Deputy Commissioner of Central Excise, Kalol Division [adjudicating authority].

2. Briefly stated, the appellant is engaged in the manufacture of P & P Medicines. During audit of the records of the appellant, it was observed that they were clearing physicians' samples at a lower price than their similar other finished goods cleared. Accordingly, a show cause notice dated 15.01.2007 pertains to the period of July 2004 to June 2006 was issued to them for short payment of Central Excise duty amounting to Rs.4,58,449/-, alleging the provisions of Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [valuation rules] read with Board's Circular No.813/10/2005-CX dated 25.04.2005. Vide the impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty equal to the duty amount under Section 11 AC of the Central Excise Act, 1994 (CEA).

2. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The adjudicating authority has confirmed the demand for the period from July 2004 to June 2006; that until introduction of CBEC circular dated 25.04.2005, the earlier circular dated 01.07.2002 governed the field, which directed the appellant to pay duty on free samples @110/115% of cost of production value. Therefore, demand upto the period of 25.04.2005 is contrary to the earlier circular dated 01.07.2002.
- The issue on hand was not free from doubt and the fact that the department has issued contradictory circulars from time to time on the subject and there were contrary judicial pronouncements which is sufficient to conclude that there could not have been any intention to evade payment of duty on their part. Hence penalty no imposable.
- The department was already in knowledge of all the material facts as well as figures; that there is no justification in issuing the show cause notice invoking extended period of limitation.
- The appellant has relied on various case laws in support of their arguments.

3. Personal hearing in the matter was held on 30.11.2017. Shri R.C.Saxena, Advocate appeared for the same and reiterated the grounds of appeal. He submitted additional submissions by stating that the issue of valuation of physicians' samples has been set at rest by Hon'ble Supreme Court in case of CCE V/s Sun Pharmaceuticals [2015(326) ELT 3].

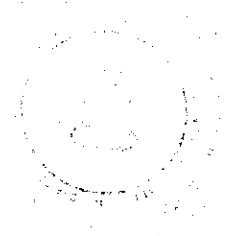


7. In the instant case, I observe that the case was transferred into call book on in the year 2008, initially on the grounds that the valuation of physicians' samples is under consideration of Hon'ble Tribunal Larger Bench, Ahmedabad in case of M/s Cadila Pharmaceuticals Ltd. On account of decisions of Larger Bench [2008 (232) E.L.T. 245 (Tri. - LB), under which it has been held that valuation of physician's samples would continue to be under Rule 4 of Valuation Rules, the case of retrieved from call book. However, the same was again transferred into call book as the department has challenged the Hon'ble CESTAT, Ahmedabad's order No. A/1994 to 2001/WZB/AHD/2007 dated 31.07.2007 in case of M/s Tuton Pharmaceuticals & Others before the Hon'ble High Court of Gujarat, involving the issue regarding applicability of extended period involved in the demand of short paid duty in clearance physicians' samples. However, the Hon. High Court has dismissed the appeal on limitation of monetary ground that the tax appeal below Rs.10 lakh is not maintainable. In view of the said decision, the case was again retrieved from call book in the year 2017.

8. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating valuation of physicians' samples cleared by the appellant during July 2004 to June 2006.

9 I observe that the adjudicating authority has confirmed the demand of Rs.4,58,449/-vide the impugned order on the grounds that as per Rule 4 of Valuation Rules, 2000, the value of excisable goods shall be based on the value of such goods sold by the appellant for the delivery at any other time nearest to the time of removal of goods under assessment, subject, if necessary, to adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable; that in the instant case, the sample had been cleared at lower price that the goods sold to others. Further, the adjudicating authority has relied on Board's Circular No.813/10/2005-CX dated 25.04.2005 and Hon'ble Tribunal Larger Bench's decision in case of M/s Blue Cross Laboratories Ltd [2006 (202) ELT 182. On other hand, the appellant has contended that the demand upto the period of 25.04.2005 is contrary to the circular dated 01.07.2002 that the said circular directed the appellant to pay duty on free samples @110/115% of cost of production value.

10. I observe that since the Valuation Rules 2000 do not contain a specific rule for valuing physicians' samples, the CBEC has clarified the valuation of physicians samples, vide Circular No.643 dated 01.07.2002, wherein it has been stated that *"Since the goods are not sold Section 4(1)(a) will not apply and recourse will have to be taken to the Valuation Rules. No specific rule covers such a contingency. Except Rule 8 all the other rules cover contingencies where **sale is involved** in some form or the other. Therefore, the residuary Rule 11 will have to be adopted along with the spirit of Rule 8. In*



other words, the assessable value would be 115% of the 'cost of production or manufacture' of the goods". The said circular has been amended vide Circular No.813 dated 25.05.2005, which states that "In case of free samples, the value should be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. I further observe that the Hon. Tribunal Larger Bench has been held in case of M/s Blue Cross Laboratories Ltd [2006 (202) ELT(182)-T LB] that "Physician's samples distributed free are to be valued under Rule 4 of Valuation Rules based on value of such goods sold and delivered at any other time nearest to the time and place of removal of such samples. As stated above this decisions has been followed by the Hon. Tribunal Ahmedabad in case of M/s Cadila Pharmaceuticals [2008 (232) E.L.T. 245] and also affirmed by the Hon. High Court of Mumbai in case of M/s Indian Drugs Manufacturers Assocn [2008 (222) ELT 22].

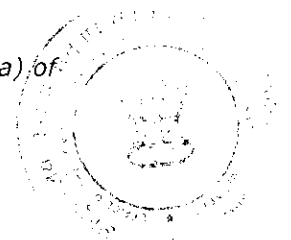
11. However, I observe that the Hon. Tribunal, Ahmedabad, Division Bench has decided an identical issue in the case of CCE, Daman V/s Sun Pharmaceuticals Ltd, vide order dated 27.02.2009 [2009 (245) ELT 749]. A conflicting opinion/decision has passed in the said order by the two members of Tribunal. The Technical Member has taken a view that price was not the sole consideration and therefore, requirement of Section 4 (1) (a) of the CEA not fulfilled. On other side, the Member, Judicial took contrary view that all the conditions envisages by Section 4(1) (a) of the CEA i.e sales of the goods from the factory gate where price is the sole consideration and the buyer and seller are not related persons, stand fulfilled. However, both the decisions were referred to the third Member and the third Member has concurred with the view taken by the Technical Member.

12. By considering the appeal filed M/s Sun Pharmaceuticals Ltd against above referred order, the Hon'ble Supreme Court has decided the matter along with the appeal filed by the department in case of the same assessee against CESTAT order No. A/177-179/WZB/AHD/06 dated 10.11.2006. The Hon'ble Supreme Court's order is reproduced below:

6. As already noted above, the only ground which was mentioned in the Show Cause Notice was that since the goods had not been sold, the provisions of Section 4(1)(a) of the Act could not be applied. We find that in the show cause notice, the Department has, thus, accepted that no monetary consideration or any other consideration had been received by the assessee or the distributors from a doctor or concerned to whom free distribution of sample packs had been made. Further there was no allegation in the show cause notice that the price at which the goods were sold by the assessee to the distributors was not sole consideration. In fact, the genuineness of the price at which the physician samples were sold by the assessee to the distributors was not even doubted. It is only on the ground that the goods were not actually sold by the distributors to the physicians, which was the ground on which it was contended that the case was not covered under Section 4(1)(a). The CESTAT, therefore, in our opinion, has gone beyond the Show Cause Notice and on this ground alone, the judgment of the CESTAT dated 27-2-2009, which is the subject matter of Civil Appeal No. 3263 of 2009, warrants to be set aside. Civil Appeal No. 3263 of 2009 is, accordingly, allowed.

7. We now advert to the central issue, viz., whether provisions of Section 4(1)(a) of the Act are applicable or not.

8. Section 4 reads as under :-



"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time a) and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value..

(b) ..

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section, -

(a) to (cc)

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

9. As per the aforesaid provision, it is the transaction value which is to be determined and on which excise duty is payable.

10. As mentioned above, the assessee had put up the defence that since physician samples were not meant for sale by distributors but were to be given free of cost to the physicians, the assessee had charged lesser price. This statement of the assessee had not been doubted. The only reason in the show cause notice given was that since the physician samples were given free of cost by the distributors and no price was charged, the case was not covered by the provisions of Section 4(1)(a) of the Act. This is clearly fallacious and wrong reason. The transaction in question was between the assessee and the distributors. Between them, admittedly, price was charged by the assessee from the distributors. What ultimately distributors did with these goods is extraneous and could not be the relevant consideration to determine the valuation of excisable goods. When we find that price was charged by the assessee from the distributors, the show cause notice is clearly founded on a wrong reason. The case would squarely be covered under the provisions of Section 4(1)(a) of the Act. In view thereof, the Central Excise Rules would not apply in the instant case.

11. As a result, we are of the opinion that the decision dated 10-11-2006 rendered by the CESTAT depicts the correct position of law and rightly holds that the case would be covered by the provisions of Section 4(1)(a) of the Act and in view thereof Rule 6(b)(ii) of the Rules would not apply. Resultantly, Civil Appeal Nos. 3742-3744 of 2007 of the Revenue fail and are hereby dismissed.

Vide above referred decision, I observe that the Hon'ble Supreme Court has been set at rest the issue of valuation of physicians' samples and hold that the valuation would be covered by the provisions of Section 4(1) (a) of the CEA.

13. I further observe that vide circular No. 1006/13/2015-CX dated 21.09.2015, CBEC has been clarified that the Board Circulars contrary to the judgments of Hon'ble Supreme Court become non-est in law and should not be followed.

14. In view of above, by applying the ratio of the decision of Hon'ble Supreme Court, I also hold that that the valuation would be covered by the provisions of Section 4(1) (a) of the CEA and the valuation of physicians' samples cleared by the appellant during the relevant period is required to be done accordingly.



15. In view of above discussion, I set aside the impugned order and the appeal filed by the appellant is accordingly disposed of.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /12/2017.

Attested

मोहान व.व.
(Mohan V.V)
Superintendent (Appeal)

By RPAD

To

M/s Daywell Pharmaceuticals,
Plot No.3491, GIDC Estate,, Phase-IV,
Chhatral, Taluka-Kalol, Dist. Gandhinagar

Copy to:-

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

