

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 53823 OF 2018

[Arising out of the Order-in-Original No. ALW-EXCUS-000-COM-13-18-19 dated 19/07/2018 passed by The Commissioner of Central GST, Alwar – 301 001.]

M/s Rajasthan Antibiotics Ltd.

.....Appellant

A-619 & 630, Road No. 5B,
RIICO Industrial Area,
Bhiwadi, Rajasthan.

Versus

Commissioner of CGST,

....Respondent

`A' Block, Surya Nagar,
Alwar – 301 001.

APPEARANCE:

Shri G.K. Sarkar and Prashant Srivastava, Advocates for the appellant.

Shri Shiv Shankar, Authorized Representative for the Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50740/2025

DATE OF HEARING : 17.04.2025

DATE OF DECISION: 21.05.2025

P.V. SUBBA RAO

The Order dated 19.7.2018¹ passed by the Commissioner of Central Goods and Services Tax, Alwar² in pursuance of the remand order dated 21.11.2017 passed by this Tribunal is

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- 1. impugned order**
 - 2. Commissioner**

assailed by M/s Rajasthan Antibiotics Ltd.³ in this appeal. By the impugned order, the Commissioner confirmed demand of Central Excise duty of Rs. 60,95,448/- under the proviso to section 11A(1) of the Central Excise Act, 1944⁴ along with interest and imposed an equal amount as penalty under section 11AC of the Act. The facts which lead to the issue of the impugned order are as follows.

2. The appellant manufactures pharmaceutical products and was registered with the Central Excise department and has been paying Central Excise duty. It was also availing credit of CENVAT on the inputs and input services which it had procured. Based on an audit report, a show cause notice dated 3.6.2013⁵ was issued to the appellant covering the period September 2009 to May 2010 demanding Central Excise duty under the proviso to section 11AC(1) of the Act on the edible lactose cleared by it. It was also proposed to demand interest and impose penalties. The appellant resisted the proposals in the SCN which were, however, confirmed by the Commissioner by an order dated 27.8.2014. The appellant assailed this order on the ground that it had not manufactured but imported edible lactose on which it availed CENVAT credit and sent it for processing to a job worker. Some of the lactose was so processed by the job worker and the rest was returned to the

3. appellant
4. Act
5. SCN

appellant. Thereafter, the appellant sold the edible lactose after reversing the CENVAT credit which it had availed.

3. By order dated 21.11.2017, this Tribunal set aside the Commissioner's order dated 27.8.2014 and remanded the matter with a direction to examine the nature of the lactose imported by the appellant- whether it was edible or not- and decide the matter afresh after giving a reasonable opportunity to the appellant to present its case. The Commissioner passed the order impugned in this appeal in pursuance of the remand order. On the specific question referred to by this Tribunal, the Commissioner recorded in paragraph 24 of the impugned order as follows:

"25. In the notice, it has been alleged that the assessee have cleared 1456750 kg of "Edible Lactose" valued at Rs. 6,49,79,145/- without payment of Central Excise duty of Rs. 60,95,448/- during September 2009 to May 2010 in the guise of clearance of inputs as such, by suppressing the production and clandestine clearance of dutiable Edible Lactose without payment of duty with intention to evade excise duty in contravention of provisions of Rule 4,6,8,10 and 11 of Central Excise Rules, 2002. In terms of the specific directions of the CESTAT *"to decide the nature of the lactose imported by the assessee- Appellant- whether it is edible or not"*, it has since been confirmed that the assessee has imported edible lactose as is

evident from the description mentioned in the Bills of Entry submitted by the assessee as detailed in the Bills of Entry submitted by the assessee as detailed in paragraph 22 above. Thus it is not in dispute that the assessee has imported 1567.320 MT of edible lactose during the period August 2009 to December 2009.”

4. He also recorded the contentions of the appellant in its reply and during personal hearing, including that they had no facilities to manufacture lactose of either edible grade or pharma grade and therefore, used the facilities of M/s. Cephram Milk Specialties to convert edible grade lactose to pharma grade lactose on job work basis and that it had sent 340 MT of edible grade lactose to the job worker and received only 131.5 MT of IP grade lactose after processing and 208.5 MT was lost during processing.

5. After recording the above, he held in paragraph 38 of the impugned order that “the assessee has cleared 1456.75 MT of edible lactose valued at Rs. 6,49,79,145/- without payment of CENVAT of Rs. 60,95,448/- during the period September 2009 to May 2010 in guise of “clearance of inputs as such” and confirmed the demand of CENVAT (as the Central Excise duty was called during the relevant period).

6. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

7. The issue to be decided is whether the appellant was liable to pay CENVAT on the edible lactose which it had cleared (as asserted by the Revenue) or not (as asserted by the appellant). It is necessary to look at the charging section of the Act to answer this question. It reads as follows:

“3. Duty specified in the Fourth Schedule to be levied.—

(1) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:

Provided that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent export oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975)”.

8. Thus, duties can be charged if excisable goods are manufactured or produced in India. According to the appellant, as recorded in the impugned order, it had no manufacturing facility to manufacture edible lactose at all. It had imported edible lactose, took it into its factory and availed CENVAT credit of the Additional Duty of Customs paid in the Bills of Entry. The assessee got part of the edible lactose processed into pharma grade lactose through a job worker and cleared the rest of the edible lactose as such after

reversing the CENVAT credit which it had taken. In the first round of litigation, this Tribunal wanted this fact checked- whether it had imported edible grade lactose. The reason is that the charge against the appellant is that it cleared edible grade lactose. If it had imported edible grade lactose, took it into its factory and later cleared edible grade lactose, it can only be clearance of the input which it had imported.

9. The Commissioner confirmed that the appellant had imported edible grade lactose. He did not record any finding nor produced any evidence that the appellant had the facility to manufacture edible grade lactose let alone that it had manufactured edible grade lactose. He only confirmed the demand on the ground that the appellant had cleared edible grade lactose from the factory. Evidently, if the appellant imported edible grade lactose, took it into the factory and got some portion processed through a job-worker into pharma grade lactose and sold the rest, the edible grade lactose would have been taken out of the factory.

10. As can be seen from Section 3 of the Act, the charge of duty of excise (known as CENVAT) is on manufacture or production of excisable goods and not merely on clearing them (i.e., taking goods out of the factory which it had not manufactured). The Commissioner lost sight of the charging section of the Act and confirmed the demand without

establishing through any evidence that the appellant had manufactured edible grade lactose.

11. In view of the above, the impugned order cannot be sustained and needs to be set aside. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on 21/05/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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