

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9691 OF 2019

Nicholas Piramal (I) Ltd.,	..	Petitioner.
v/s.		
The Union of India & Others	..	Respondents.

Mr. Prasad Paranjape with Mr. Jas Sanghavi i/b. PDS Legal, for the Petitioner.

Mr. J. B. Mishra with Mr. Sham Walve and Mr. Pritish Chetterjee, for Respondent Nos.1, 3 and 4.

**CORAM: M.S.SANKLECHA &
NITIN JAMDAR, JJ.**
DATE : 15th NOVEMBER, 2019.

PC:-

At the request of the parties, this Petition is being disposed of finally at the stage of admission.

2 This Petition under Article 226 of the Constitution of India, challenges the order dated 20th November, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, (the Tribunal). The impugned order dated 20th November, 2018 is a common impugned order, rejecting the Petitioner's application for rectification along with similar applications by two other Assessee/Appellants.

3 The Petitioner is engaged in manufacture of medicines. The Petitioner cleared some medicines as physician samples for free distribution among physicians and some medicines were sold as

physicians samples to other pharmaceutical company for free distribution by them. The demand against the Petitioner was confirmed on the aforesaid two accounts. Besides, imposing penalty upon the Petitioner.

4 Before the Tribunal, the Appellant's grievance was with regard to confirmation of demand on both the aforesaid grounds as well as on imposition of penalty. However, the order passed in Appeal on 26th April, 2018 with only in respect of physician's sample distributed free by it amongst the physicians.

5 The rectification application specifically refers to the above aspects. This while urging that, the issue of physicians samples being sold and on the issue of penalty being imposed, was not considered by the Tribunal in its order dated 26th April, 2018.

6 However, the Tribunal dismissed the rectification application by the impugned order dated 20th November, 2018.

7 The impugned order disposed of the Petitioner's rectification application by merely recording as under:-

“ The applicants have filed these miscellaneous applications, seeking for Rectification of Mistake in the orders dated 28.02.2018, 13.03.2018 and 26.04.2018 passed by this Tribunal. On going through the case records vis-a-vis the grounds urged in the miscellaneous applications filed by the applicants, we do not find any justifiable reason to interfere with the said orders passed by the Tribunal. Accordingly, the same are dismissed.

On the face of it, there are no reasons in this order as to why the grievance of the Petitioner set out in the rectification application was not justifiable.

8 In these circumstances, we allow the Writ Petition. The impugned order dated 20th November, 2018 passed by the Tribunal is, set aside. The rectification application stands restored to the file of the Tribunal to be decided as per law. We make it clear that, what is stated in this order, is only to stress the need to remand and restore the application and not to be construed as reflection on the merits of the Petitioner's case in the rectification application.

9 **Writ Petition disposed of** in the above terms.

(NITIN JAMDAR,J.)

(M.S.SANKLECHA,J.)