

कार्यालय आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट न. ६७-७६ / बी-१ "सिद्धि सदन" बिल्डिंग
PLOT NO. 67-76/B-1, "SIDDHI SADAN" BUILDING,
नारायणभाई उपाध्याय मार्ग, भावनगर - ३६४ - ००१
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

फ़ोन : (0278) 2523627

फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा
By Regd. Post A. D.

फाइल नं. - V/15-32/Dem/HQ/2012-13
F. No. - V/15-32/Dem/HQ/2012-13

आदेश की तारीख : 21-03-2014
Date of Order : 21-03-2014

जारी करने की तारीख : 21-03-2014
Date of Issue : 21-03-2014

पारितकर्ता,

श्री नवनीत गोयल

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर

Passed by,

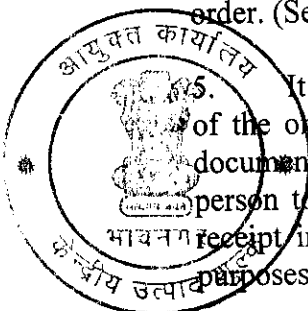
SHRI NAVNEET GOEL

Commissioner,

Central Excise and Service Tax, Bhavnagar

मूल आदेश नं.: BHV-EXCUS-000-COM-007-13-14 DT 21-03-2014
Order-in-Original No.: BHV-EXCUS-000-COM-007-13-14 DT 21-03-2014

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.
2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.
3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.
4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).
5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Registrar or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.



6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

- (a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);
- (b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/- (Rupees Five Thousand);
- (c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/- (Rupees One Thousand);

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

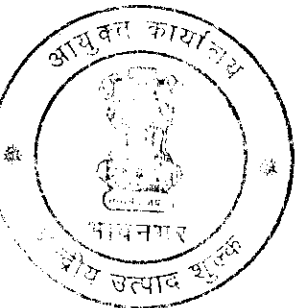
9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

To,

- (1) M/s. Prince Web,
Plot No. 255/1, GIDC Chitra,
Bhavnagar.
- (2) Shri Suresh Jivrajbhai Sakariya,
Partner of M/s. Prince Web
Plot No. 255/1, GIDC Chitra,
Bhavnagar.

Subject: Show Cause Notice F. No. V/15-32/Dem/HQ/2012-13 dated 08.10.2012.



BRIEF FACTS OF THE CASE:

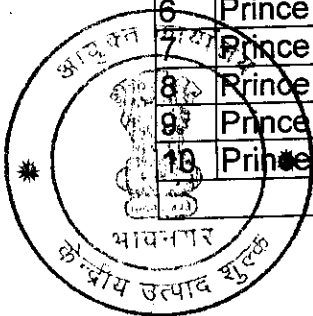
1.1 M/s Prince Web, having their factory premises at 255/1, G.I.D.C., Chitra, Bhavnagar (hereinafter referred to as the Noticee) were manufacturers of branded glucose powder viz. Prince Care Glucose-C and Prince Care Glucose-D, falling under Chapter sub-heading No. 1702 30 39 of the first schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as CETA). The above goods were subjected to MRP based assessment in terms of Section 4A of Central Excise Act, 1944 (hereinafter referred to as CEA). Further, M/s Prince Care Pharma Pvt. Ltd. (PCPPL fore brevity) having their factory premises at 255/2, G.I.D.C., Chitra, Bhavnagar were manufacturers of various pharmaceutical products under brand name "Prince Care".

1.2. The issue involved in the present case is the whether, the benefit of duty exemption is available to the value based clearances as a small scale unit, under Notification No. 08/2003-C.E. dtd. 01-03-2003, as amended, is available to the noticee for the manufacture and clearance of goods utilising the brand name or trade mark of others.

2.1 It was gathered from various sources that M/s Prince Care Pharma Pvt. Ltd., Plot No. 255/2, G.I.D.C., Chitra, Bhavnagar having annual turnover of more than Rs. 2 Crores, are engaged in manufacturing and clearing of various excisable pharmaceutical products without payment of Central Excise duty. So, simultaneous searches were conducted at the factory of M/s Prince Care Pharma Pvt. Ltd. located at address above and office premises located at 5, City Centre, Kalanala, Bhavnagar respectively, on 02.02.2011 under Panchnamas and incriminating records / documents were withdrawn.

2.2 During the search proceedings at the factory premises of M/s Prince Care Pharma Pvt. Ltd. located at Plot No. 255/2, G.I.D.C., Chitra, Bhavnagar, the officers of Central Excise, noticed a steel gate located on left side at the rear side of the premises, which was opening in the adjacent premises i.e. in Plot No. 255/1, G.I.D.C., Chitra, Bhavnagar. On inquiry it was revealed that the adjacent premises i.e. Plot No. 255/1, G.I.D.C. Chitra, Bhavnagar was occupied by M/s Prince Web where manufacturing and packing of glucose powder was carried out and the said gate was kept for movement in the said premises. It also revealed that Shri Suresh Jivraj Sakariya who was one of the Directors of M/s Prince Care Pharma Pvt. Ltd. was also a partner of M/s Prince Web. Consequently the search was extended to the premises of M/s Prince Web i.e. Plot No. 255/1, G.I.D.C., Chitra, Bhavnagar. On entering in the said premises of M/s Prince Web, the manufacturing and packing of glucose powder under the brand name "Prince Care" was found to be carried out with the help of electrical machine and man power, under supervision of one Shri Narendra Kanuji Parmar. On being inquired, Shri Suresh Jivraj Sakariya explained the process of manufacturing of glucose powder using Dextrose Monohydrate as main raw material and he also explained that after manufacturing, the glucose powder was filled in the plastic pouches with the help of an electrical filling machine, then these filled pouches were packed inside the final packing manually, thereafter the finished product was cleared from the premises of M/s Prince Web only. On taking the stock then & there, finished goods as per the details tabulated below were found available in the factory premises of M/s Prince Web-

Sr. No.	Description of Goods	Batch No.	Quantity	Unit	MRP/ Unit	MRP Value
1	Prince Care Glucose-D , 100	GD-	12600	Packet	22/-	2,77,200/-
2	Prince Care Glucose-D , 1	GD-	120	Packet	130/-	15,600/-
3	Prince Care Glucose-D , 50	GD-	2898	Packet	12.50/-	36,225/-
4	Prince Care Glucose-C , 100	GC-	4704	Packet	25/-	1,17,600/-
5	Prince Care Glucose-C , 200	GC-	2016	Packet	48/-	96,768/-
6	Prince Care Glucose-D , 200	GD-	1536	Packet	38/-	58,368/-
7	Prince Care Glucose-D , 400	GD-	624	Packet	72/-	44,928/-
8	Prince Care Glucose-C, 400	GC-	96	Packet	90/-	8,640/-
9	Prince Care Glucose-C , 1	GC-	72	Jar	185/-	13,320/-
10	Prince Care Glucose-C , 500	GC-	216	Packet	105/-	22,680/-
TOTAL						6,91,329/-



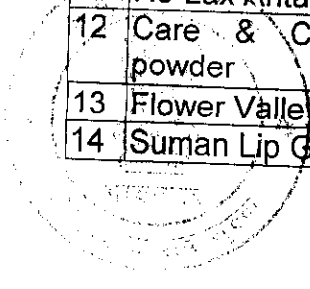
It was found that M/s Prince Web was illegally engaged in manufacturing, packing and clearance of excisable branded goods viz. "Prince Care Glucose-D" and "Prince Care Gluco-C" using brand name "Prince Care" which was owned by another company M/s Prince Care Pharma Pvt. Ltd., without taking any Central Excise Registration and without payment of Central Excise duty, so, the entire stock of the finished goods found available on 02/02/2011 in the factory premises of M/s Prince Web in marketable condition of total MRP of Rs. 6,91,329/-, was placed under seizure under panchnama dated 02/02/2011. The same was handed over to Shri Suresh Jivraj Sakariya, partner of M/s Prince Web and Director of M/s. Prince Care Pharma Pvt. Ltd. for safe custody, under Supratnama dated 02/02/2011.

2.3. M/s Prince Web sought for provisional release of the goods vide their letter dated 27.05.2011 and on submission of Bank Guarantee and Bond, the same were released provisionally. A show cause Notice No. V/15-08/Demand-Prince Web/Offence/2011-12 dated 25.07.2011 (for seizure portion) asking them to show cause as to why the said goods should not be confiscated and central excise duty applicable and penalty should not be levied and recovered from them.

3.1 A statement of Shri Narendrabhai Kanuji Parmar, Supervisor of M/s Prince Care Pharma Pvt. Ltd., Bhavnagar was recorded on 02/02/2011 under Section 14 of the CEA, wherein he stated that he was working with M/s Prince Care Pharma Pvt. Ltd., Plot No. 255/2, GIDC, Chitra, Bhavnagar on the post of Supervisor since last 10 years; that on the direction of Shri Suresh Jivraj Sakariya, Director of M/s Prince Care Pharma Pvt. Ltd., Bhavnagar and partner of M/s Prince Web, he supervised the work of manufacturing and packing of Prince Care brand glucose powder in the factory of M/s Prince Web; that in the factory of M/s Prince Web, only Glucose-C & Glucose-D of "Prince Care" brand were manufactured; that an electrically operated pouch filling machine was installed in the premises of M/s Prince Web with the help of which, Prince Care brand glucose -C or glucose-D was filled in the pouches of 50 gm., 100 gm., 200gm, 400gm., 500gm. and 1000 gm. which were further packed in boxes manually by the labour in his supervision and then the finished goods were cleared from the premises of M/s Prince Web to respective buyers on the direction of Shri Sureshbhai. So, the statement of Shri Narendrabhai Kanuji Parmar clearly evidenced that M/s Prince Web was engaged in manufacturing, packing and clearance of the "Prince Care" brand glucose powder.


4.1.1 A statement of Shri Suresh Jivraj Sakariya, Director of M/s Prince Care Pharma Pvt. Ltd., Bhavnagar was recorded on 02/02/2011 under Section 14 of the CEA wherein he stated that M/s Prince Care Pharma Pvt. Ltd. was a Private Limited concern and he was one of the six directors of M/s Prince Care Pharma Pvt. Ltd., Bhavnagar; that he manages the production side of affairs; that the said company, started in the year 1991 as a partnership firm in the name of M/s Prince Care and it was converted to M/s Prince Care Pharma Pvt. Ltd. in June 2009; that they were dealing in the manufacture and trading of food products, ayurvedic confectionery and cosmetic products which were listed as below:-

Sl. No.	Name of Product	Trade Mark	Ownership of trademark
1	Glucose -D	Prince Care Glucose - D	M/s Prince Care
2	Gluco - C	Prince Care Gluco C	M/s Prince Care
3	Pushp Honey	Pushp Honey	M/s Prince Care
4	Pain Care	Pain Care	-do-
5	Giant Dragon Balm	Giant Dragon Balm	-do-
6	Bhavnagari Pain Balm	Bhavnagari Pain Balm	-do-
7	Care Rub	Care Rub	-do-
8	Prince Care Inhaler	Prince Care Inhaler	-do-
9	Bhavnagari Churna	Bhavnagari Churna	-do-
10	Prince Gripe Water	Prince Gripe Water	-do-
11	Re-Lax Antacid	Re-Lax	-do-
12	Care & Cool prickly heat powder	Care & Cool	-do-
13	Flower Valley Lotion	Flower Valley	-do-
14	Suman Lip Guard	Suman	-do-



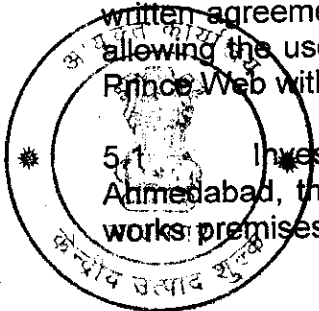
15	Suman Skin Care ointment	Suman	-do-
16	White Petroleum Jelly	Prince Care Petroleum Jelly	-do-
17	Hajmi Digestive candy	Hajmi	Prince Supplicco
18	Care Drop cough drop	Care Drop	-do-

4.1.2. He further stated that all the trademarks as tabulated above were owned by their company M/s Prince Care Pharma Pvt. Ltd. except that under Sr. No. 1,2,17 and 18; that he produced copies of trade mark ownership of all the above products under his dated signature; that the trade mark of the products at Sl. No. 1 and 2 of the above table had been allowed to be used by M/s Prince Web, situated at 255/1 GIDC, Chitra, Bhvanagar-4, adjacent to their factory; that as regards to Sl. No. 17 & 18 of the above table, the trademarks of the said products were owned by M/s Prince Supplicco, 90 AGIDC, Chitra; that for allowing the use of their trade mark by M/s Prince Web they get a consideration; that there was a written agreement between M/s Prince Care Pharma Pvt. Ltd and M/s Prince Web for the same; that he does not know where the agreement was and who had signed the agreement from the side of M/s Prince Web; that he also does not aware of the amount of consideration for the same; that he will produce a copy of the said agreement within a week.

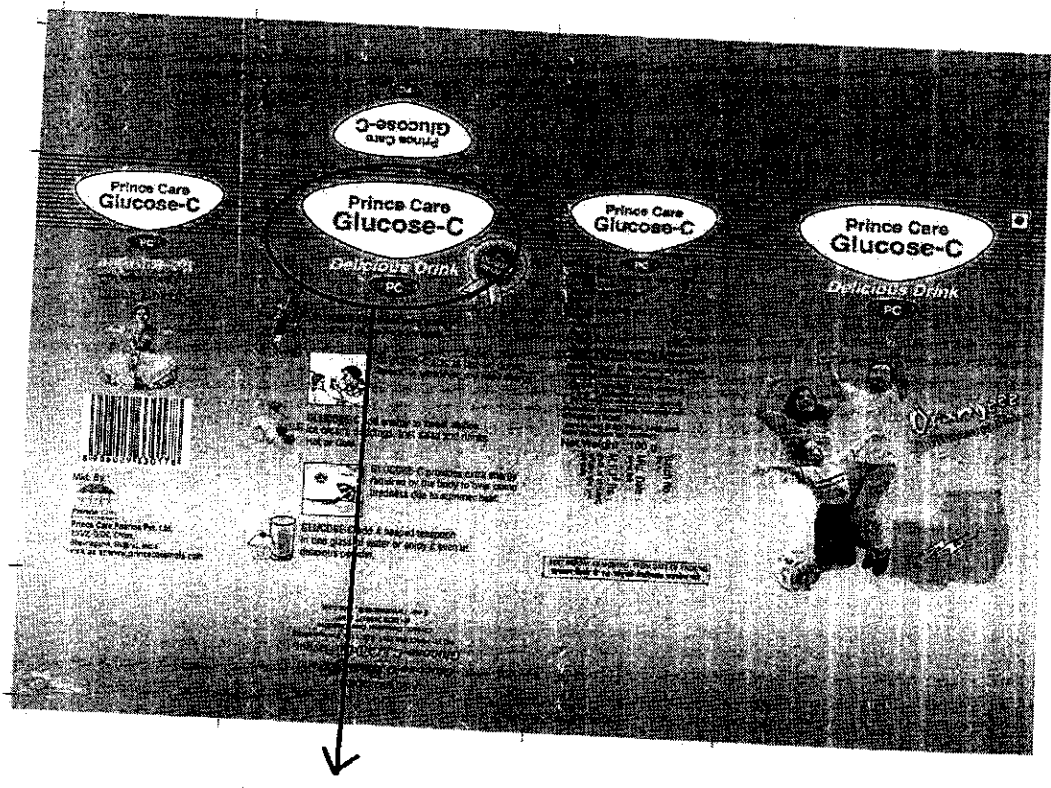
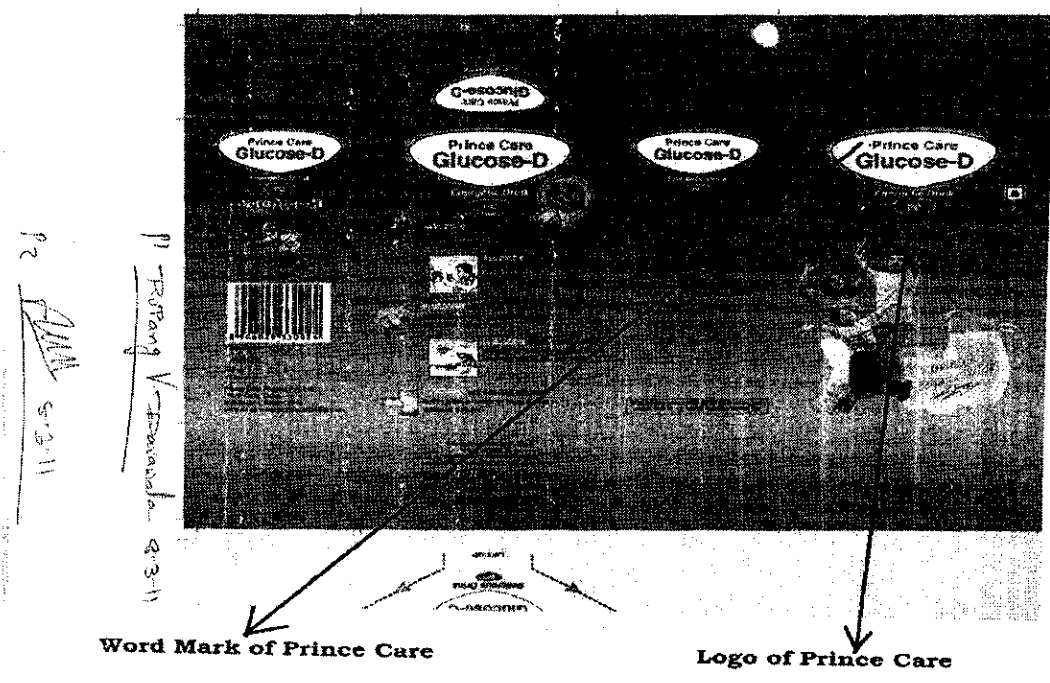
4.2 Scrutiny of the copies of trademark ownership produced by Shri Suresh Jivraj Sakariya under his above statement dated 02/02/2011, was carried out and it was found that he has produced copies of applications made by M/s Prince Care Pharma Pvt. Ltd. or erstwhile M/s Prince Care to the Trade Marks Registry for registration of the trademarks owned by them. From the said documents, it could be seen that the words "Prince Care", "Prince" "Care" or symbol  was used by M/s Prince Care Pharma Pvt. Ltd. erstwhile M/s Prince Care for branding their products. It therefore followed that these brands were established brands and used by either, the erstwhile M/s Prince Care or by M/s Prince Care Pharma Pvt. Ltd. The brand names as depicted above were clearly indicating the manufacturer i.e. M/s Prince Care or M/s Prince Care Pharma Pvt. Ltd., as the case may be. Also Shri Suresh Jivraj Sakariya clearly admitted that the brand name "Prince Care" belonged to M/s Prince Care Pharma Pvt. Ltd., however, the glucose powder under the said brand name was manufactured by M/s Prince Web. Apart from this, the other products such as Prince Care Inhaler, Prince Care Petroleum Jelly etc. were manufactured by M/s Prince Care Pharma Pvt. Ltd. or erstwhile M/s Prince Care. Therefore, it transpired that "Prince Care" was an established brand which was owned and used by M/s Prince Care Pharma Pvt. Ltd. for products manufactured by them.

4.3 Further, as Shri Suresh Jivraj Sakariya, Director of M/s Prince Care Pharma Pvt. Ltd. was also a partner of M/s Prince Web, his statement in the capacity of the partner of M/s Prince Web was also recorded on 02/02/2011, wherein he confirmed to the facts of panchnama dated 02/02/2011 and stated that they started manufacturing Glucose-D and Glucose-C with the trade mark of M/s Prince Care as per the agreement mentioned in his statement dated 02/02/2011 given by him in the capacity of the Director of M/s Prince Care Pharma Pvt. Ltd.; that he concurred entirely with the statement dtd. 02-02-2011 of Shri Narendrabhai Kanuji Parmar, Supervisor of M/s Prince Care Pharma Pvt. Ltd.; that they manufactured Glucose-D and Glucose-C only in their premises for which first they purchase Dextrose Monohydrate and Di Calcium Phosphate from the suppliers and after processing the same with other ingredients, Glucose powder is produced and packed in retail packages of different denominations viz. 50 gm, 100 gm, 200gm, 400gm, 500gm and 1 Kg, and such retail packages were further packed in cartons for ultimate dispatch to their buyers; that clearances of the said product to their buyers were made from the premises of M/s Prince Web only. Shri Suresh Jivraj Sakariya, partner M/s Prince Web assured to produce a copy of the written agreement between M/s Prince Care Pharma Pvt. Ltd. and M/s Prince Web for allowing the use of the trade mark owned by M/s Prince Care Pharma Pvt. Ltd. by M/s Prince Web within a week in his statement dated 02/02/2011, but he failed to do so.

5.1 Investigation in the matter was extended to M/s Le Griffé Offset Pvt. Ltd., Ahmedabad, the printer and supplier of the packing material of the Noticee, and their works premises at, 3 Lower Ground Floor, Popular House, Ashram Road, Ahmedabad

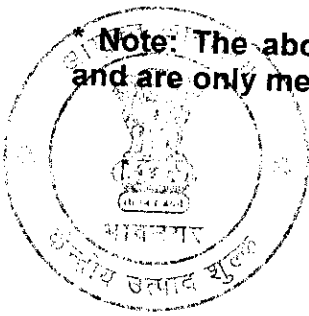


was searched on 08/03/2011 under panchnama. During the search of premises of M/s Le griffe Offset Pvt. Ltd., Ahmedabad, Sale Invoices & ledger account pertaining to M/s Prince Web for the F. Y. 2008-09, 2009-10 & 2010-11 (till 08/03/2011), Sale Invoices & ledger account pertaining to M/s Prince Care for the F. Y. 2006-07 & 2007-08) and labels of packing material of products manufactured by M/s Prince Web, Bhavnagar were seized. All the labels of packing material recovered from the premises of M/s Le griffe Offset Pvt. Ltd., Ahmedabad were placed in a file mentioned at page No. 3 of the above panchnama and it contained art work of Prince Care Glucose-C Lemonee, Prince Care Glucose-C Orangee, Prince Care Glucose-D, in all the labels words 'Prince Care' was prominent. Shri Ashok Dedaniya, the Director of M/s Le Griffé Offset Pvt. Ltd., Ahmedabad also confirmed that M/s Prince Web had ordered for the labels and packaging material with the words 'Prince Care' on them from the year 2008 onwards. Scanned images of labels recovered from M/s Le griffe Offset Pvt. Ltd. were pasted below for a better appreciation of facts.

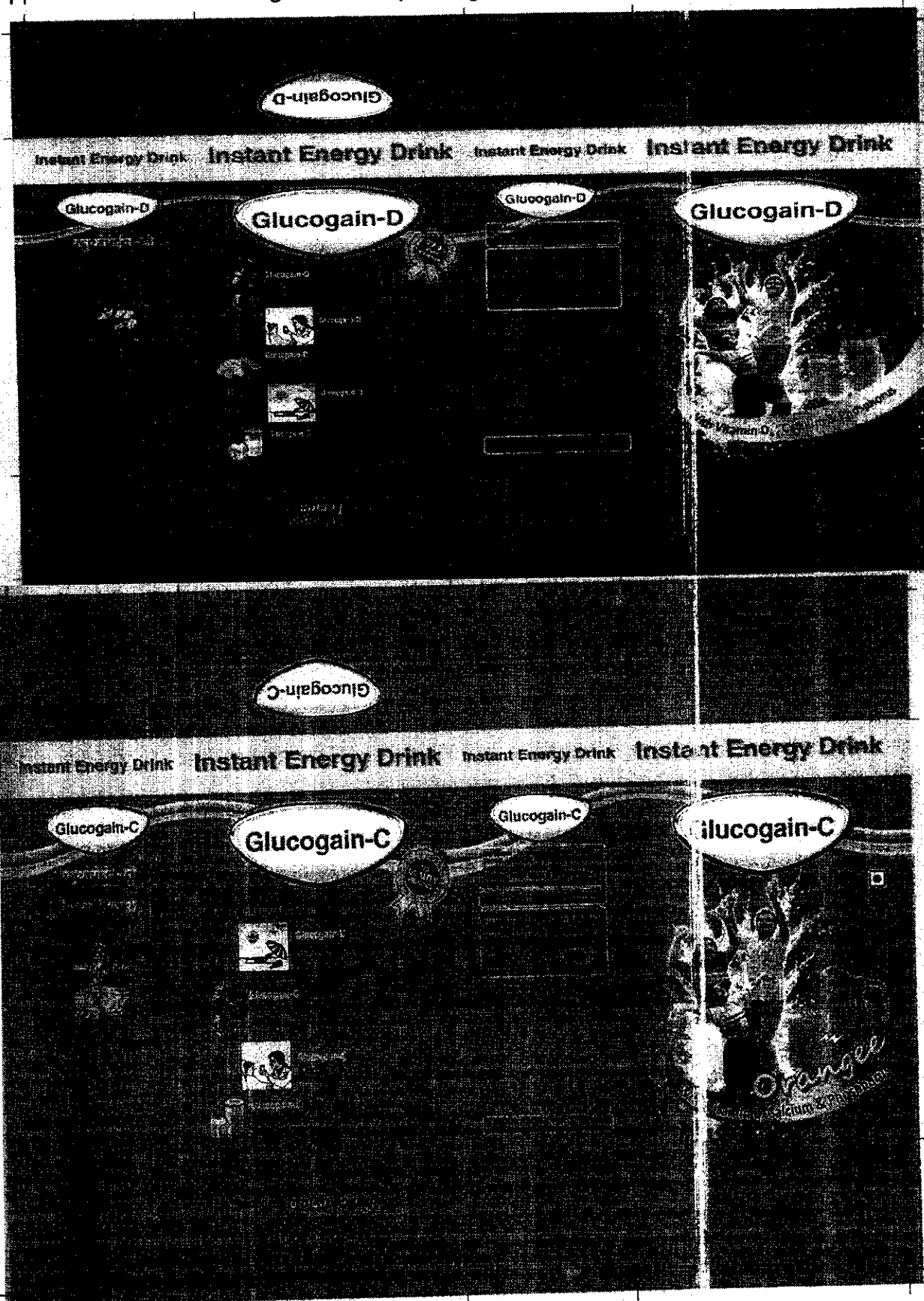


Art work, word mark & logo of price care prominently printed at five places on the packing material

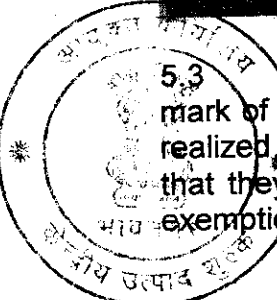
Note: The above ellipse and arrows are external to the scanned image above and are only meant as illustrations and for ease of depiction.



5.2 It was also revealed during the search that M/s Prince Web had ordered a new series of packing material called "Glucogain" series on 08/02/2011 and consequently from 26/02/2011 onwards, packing material of Glucogain Series such as Glucogain-C Lemonee, Glucogain Orangee & Glucogain-D was being supplied by M/s Le griffe Offset Pvt. Ltd., Ahmedabad to the Noticee. It was pertinent to mention here that just after the search, they had stopped manufacturing glucose powder under Brand Name 'Prince Care' and started manufacturing glucose powder under a new Brand Glucogain without use of art work, word mark or logo of 'Prince Care'. For better appreciation scanned images of such packing materials are pasted herein below.



5.3 In the above shown packing material nowhere the logo, art work or word mark of 'Prince Care' was used, therefore, it was clear that soon after the search, they realized that their act of using brand name of other company had been unearthed and that they were not eligible for exemption from payment of Central Excise duty under exemption Notification No. 8/2003-CE dated 01/03/2003. Consequently, to avail the



benefit under the above exemption Notification, they stopped manufacturing glucose powder under other person's brand name. Therefore it was clear that the Noticee were *deliberately using the brand name "Prince Care" which was an established brand to sell their product.*

5.4 A statement of Shri Ashok G. Dedania, Director of M/s Le griffe Offset Pvt. Ltd., Ahmedabad was recorded on 17/03/2011. The relevant portion of the said statement was reproduced herein below-

Q. No. 1:- *Since when you started your business with M/s Prince Care Pharma Pvt. Ltd., Bhavnagar / M/s Prince Web, Bhavnagar?*

Answer: *We started our business with M/s Prince Care, Bhavnagar in February, 2005. The said firm later changed its name to M/s Prince Care Pharma Pvt. Ltd., Bhavnagar, whereas we started our business with M/s Prince Web since 2008-09.*

Q. No. 2:- *Do you have the labels/samples of packaging products supplied to M/s Price Web, 255/1, GIDC, Chitra, Bhavnagar? If yes than produce the same.*

Answer:- *Your attention is invited towards seized file No. 3 resumed under panchnama 08/03/2011 drawn at our premises. In the said file the labels printed on box packaging supplied by us to M/s Price Web, 255/1, GIDC, Chitra, Bhavnagar for the products Prince Care Glucose-C of Lemon and Orange flavor and Prince Care Glucose-D are available from page No. 5 to 8. It is to mention here that before April-2010 the box packing labels supplied by us to M/s Prince Web, Bhavnagar contained printing as Prince Care Gluco-C instead of Prince Care Glucose-C except of this, the entire design and content of the packaging label were same as of Prince Care Glucose-C as available at page No. 5 & 8 of the above said file, the sample label of the same i.e. Prince Care Gluco-C is not available with us as of now, regarding Prince Care Glucose-D there was no change in the design and content of the label of box packing supplied by us before/after April-2010. Further, after 26/02/2011 we have been supplying box packing to M/s Prince Web, Bhavnagar with labels Glucogain series such as Glucogain-C of lemon & orange flavor and Glucogain-D which are available at page No. 1 to 4 of the above said file. After 26/02/2011, M/s Prince Web have stopped ordering for supply of box packing material of Prince Care Glucose-C and Prince Care Glucose-D.*

Q. No. 3:- *With whom you were interacting regarding the transaction of supplies of packaging material (Box Packages) of Prince Care Gluco-C, Prince Care Glucose-C, Prince Care Glucose-D and Glucogain-C, Glucogain-D?*

Answer:- *Regarding the transaction of supplies of packaging material (Box Packages) of Prince Care Gluco-C, Prince Care Glucose-C, Prince Care Glucose-D and Glucogain-C, Glucogain-D, I have been discussing and finalizing the same with Shri Sanjay Andhariya of M/s Prince Web, Bhavnagar right from the beginning of my business with them.*

5.5 From the statement of Shri Ashok G. Dedania, it was revealed that they had started business with M/s Prince Web in the financial year 2008-09 which was further confirmed from the file listed at Sr. No. 1, page No. 2 of the panchnama dated 08/03/2011 drawn during the search of the premises of M/s Le griffe Offset Pvt. Ltd., Ahmedabad. This file contained sale invoices of the packing material sold to M/s Prince Web and their ledger account maintained by M/s Le griffe Offset Pvt. Ltd., Ahmedabad. A study of the ledger shows that the said packing material supplier had been supplying packing material to M/s Prince Web since April-2008. The invoices raised by packing material supplier for sale of packing material also confirmed that the packing materials was supplied to M/s Prince Web since April-2008. In his statement dated 17.03.2011, Shri Ashok G. Dedania, Director of M/s Le griffe Offset Pvt. Ltd., Ahmedabad confirmed that before April, 2010, the box packing labels supplied by them to M/s Prince Web, Bhavnagar contained printing as Prince Care Gluco-C instead of Prince Care Glucose-C, except of this, the entire design and content of the packaging label were same as of

