Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 363 of 2012-DB

(Arising out of OIA-CS/06/SURAT-II/2012 dated 20/01/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Norris Medicines Ltd ....**Appellant**
Plot No. 901/4, Gidc Estate,
Ankleshwar,
Bharuch,
Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii ...**Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,
Gujarat - 395001

WITH

Excise Appeal No. 380 of 2012-DB

(Arising out of OIA-CS/06/SURAT-II/2012 dated 20/01/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Wintac Limited ....**Appellant**
16/2, Ovh Road, Basavabagudi,
Banglore,
Karnataka

VERSUS

C.C.E. & S.T.-Surat-ii ......**Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,
Gujarat - 395001

APPEARANCE:
Shri S.J Vyas, Advocate appeared for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (JUDICIAL), MR. RAJU

Final Order No. A/ 11125 - 11126 /2023

DATE OF HEARING: 11.01.2023
DATE OF DECISION: 01.05.2023

RAMESH NAIR

The brief facts of the case are that appellant M/s. Norris Medicines Ltd (Norris) are engaged in the manufacture of P&P Medicines falling under chapter 30 of the Schedule to the Central Excise Tariff Act, 1985. M/s. Wintac ltd (formerly known as M/s. Recon India Ltd) (Wintac) entered into to an agreement with Norris for manufacture of medicament namely " "Recalvin injections" for which Norris was provided technical knowhow , secret techniques formula, recipes , processes and other confidential information required for manufacture of "Reclavin Injections". The medicine manufactured by Norris was sold on Principle to principle basis by Norris to Wintac on sale price decided mutually by both the companies. The case of the department is that Norris has not included the cost of technical knowhow. Thus, undervalued the goods manufactured. Accordingly, the demand of short paid duty was raised. Since wintac was purchaser of the goods and who has also provided technical knowhow to Norris, Wintac was also imposed penalty under Rule 209 A of erstwhile Central Excise Act, 1944. The learned Commissioner (Appeals) upheld the confirmation of the above by rejecting the appeal of the appellant. Therefore, the present appeals.

2. When the matter was called out none appeared on behalf of Norris despite several opportunities were given to the appellant. Therefore, the appeal of Norris is taken for disposal. Shri S. J Vyas appeared on behalf of Wintac he submits that penalty under Rule 209 A was imposed on Company M/s Wintac Ltd whereas this penalty can be imposed to only a natural person but not on the company. He placed reliance on the following judgment:

- Steel Tubes of India Ltd Vs. Commissioner of C. Ex., Indore- 2006 (10) TMI 146 – CESTAT New Delhi (LB)
- Apple Sponge And Power Ltd Vs. Commissioner of Service Tax, Audit- I – 2018 (5) TMI 772 – CESTAT Mumbai

- CCE, Rohtak , CCE, Delhi- III vs. Novice Polymers , Airvision India Pvt Ltd, Dr Polymers – 2019 (1) TMI 1159 – CESTAT Chandigarh

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the issue to be decided in the case of Norris is that whether the cost of Royalty towards technical knowhow borne by M/s Wintac is includible in the assessable value of medicament viz. Reclavin Injection. We find that there is no dispute that the buyer of the medicament M/s Wintac has purchased technical knowhow on payment of consideration and the said technical know how was allowed to be used for manufacture of Recalvin Injection by M/s Norris. Therefore, the goods "Reclavin Injection" was manufactured with the technical knowhow which was provided by Wintac for which substantial cost was borne. Since the Wintac is the buyer of the goods and the goods has been manufactured by use of technical knowhow by Norris and such technical knowhow involves a cost such cost should be included in the assessable value of overall manufacturing of medicament. It is admitted fact that the value of technical knowhow was escaped while arriving at the transaction value, there is under valuation of medicament "Recalvin Injection". Therefore, we are of the considered view that there is short payment of duty in respect of medicament "Recalvin Injection". Hence, the demand and penalty was rightly confirmed. As regard the penalty under Rule 209 A of erstwhile Central Excise Rules, 1944 imposed on Wintac Ltd we find that the penalty under rule 209 A can be imposed only on natural person for the reason that all the activities for which the penalty is imposable can be carried out by a natural person and not by the company. On this issue the judgment relied

upon by the counsel directly supports their case. Considering the same, penalty imposed under Rule 209 A on Wintac is set aside.

As a result appeal filed by M/s Norris Ltd is dismissed and appeal filed by M/s Wintac is allowed.

(Pronounced in the open court on 01.05.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)