CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12441 of 2014-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-002-COM-112-13-14 dated 26.03.2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Sun Pharmaceuticals Industries Limited .... **Appellant**
Plot No. 24/2, GIDC Industrial Estate,
Phase-iv, Panoli,BHARUCH, GUJARAT-394116

VERSUS

Commissioner of Central Excise & ST,Surat-ii .... **Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,Surat,Gujarat-395001

APPEARANCE :

Shri AB Nawal, Cost Accountantfor the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION:09.08.2023

FINAL ORDER NO. 11883/2023

RAMESH NAIR :

The brief facts of the case are that appellant are engaged in the manufacture of pharmaceutical products in their 100% EOU. They clear their goods to their sister concern as well as to some unrelated buyers. The value in both the categories is different. The case of the department is that the value adopted for the unrelated buyers should be applied in case of goods cleared to their sister concern. Accordingly the Adjudicating Authority has raised the duty demand.

2. Shri A.B. Nawal, learned Cost Accountant appearing on behalf of the appellant at the outset submits that in the appellant's own case only for the different period, on the identical issue, this Tribunal vide order No. A/10108-10109/2023 dated 13.01.2023 remanded the matter for passing a fresh order after examining the case relating to different aspects such as

commercial levels, quantity levels, adjustments in accordance to provision of Rule 10 and cost incurred by the seller in sales in which the appellant and the buyer are not related. He prays to remand the matter to the Adjudicating Authority for a fresh order.

3. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the Revenue submits that he has no objection if the matter is remanded in the same line of Tribunal order dated 13.01.2023.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that on the identical facts in the appellant's own case the matte was remanded vide order No. A/11108-11109/2023 dated 13.01.2023 by passing following order:-

> **"04**. We have given careful consideration to the rival submissions and perused the records. We find that the Learned Commissioner has gone only on the basis that the buyer and seller are related in terms of Rule 2(2) of CVR, and proceeded to judge transactions in terms of valuation rule ibid. However, in terms of Rule 3 (3)(a) of CVR, where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the goods indicate that the relationship did not influence the price. Neither the show cause notice issuing authority nor the adjudicating authority have given reasons to hold that how the relation has indeed affected the price. The declared prices cannot be reviewed without any evidence to the effect that the relation between the appellant and the related buyer which has influenced the declared price or to the effect that there was a flow back of money between the appellant and related buyers.
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> **4.1** We find that proviso under Rule 3 (3)(b) provided that in applying the values used for comparison, due account shall be taken to demonstrate a difference in commercial levels, quantity levels, adjustments in accordance to provision of Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related. In the present matter the grievance of the Appellants is also that difference in commercial levels, quantity levels was totally ignored by the Learned Commissioner. Further submission made by the appellants and judicial decisions relied upon by the appellant before him was not considered.
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> **4.2** Under the circumstances, we find that the case needs to go back to the adjudicating authority for a proper examination of all the facts of the case, the submissions of the appellants including case laws in this regard and to pass a speaking and reasoned order as per law.

> **05.** In view of the above, the adjudicating authority is directed to consider the issue afresh, as per our observations as above, and to pass an order after giving an opportunity to the appellants. The appeals are thus allowed by way of remand."

5. We are of the view that in view of the above order, the present matter also to be remanded as per observations made in above Tribunal's decision. Accordingly, we set-aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order.

(Operative part of the order pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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