CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70551 of 2016

(Arising out of Order-in-Appeal No.333-334-CE/APPL-AGRA/LKO/2015 dated 21/08/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Zee Drugs **.....Appellant**
56, Sulabhpuram, Sikandra,
Agra-282007

VERSUS

Commissioner of Central Excise
& Service Tax **.....Respondent**
113/4, Sanjay Place, Agra

WITH

Excise Appeal No.70167 of 2015

(Arising out of Order-in-Appeal No.333-334-CE/APPL-AGRA/LKO/2015 dated 21/08/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

Shri Vinod Kumar Agarwal,
Partner of M/s. Zee Drugs **.....Appellant**
56 Sulabhpuram, Sikandra, Agra

VERSUS

Commissioner of Central Excise & Service Tax
.....Respondent
113/4, Sanjay Place, Agra

APPEARANCE:

Shri A.K. Prasad, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 11 July, 2019
DATE OF DECISION :11 July, 2019

FINAL ORDER NO. **71425-71426 / 2019**

ARCHANA WADHWA

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Authorities below vide which demand of duty of excise to the extent of around Rs.30 lakhs are confirmed against M/s Zee Drugs along with imposition of penalty upon both the appellants.

2. As per facts on record, M/s Zee Drugs was engaged in the manufacture of medicaments during the relevant period. As the medicaments were specified items in terms of Section 4A of the Central Excise Act and as the appellant was discharging their duty liability on the transaction value, Revenue initiated proceedings against them proposing confirmation of differential demand of duty. The said proceedings resulted in passing of present impugned order.

3. Learned Advocate Shri A.K. Prasad appearing on behalf of the appellant is not disputing the fact that medicaments manufactured by them were required to discharge duty liability in terms of provisions of Section 4A of the Central Excise Act. However, he clarifies that the dispute relates to the maximum retail price (hereinafter referrred to as MRP). He submits that visiting officers retrieved certain documents from their computers showing the MRP of various medicines and recorded statements of their representative accepting that the medicines were sold at the MRP. By adopting the said MRP, the differential duty stand confirmed.

The contention of the appellant is that MRP of the medicines is fixed by the Drugs Control Authority under the provisions of Drugs Price Control Order, 1995. They cannot sell the medicines in the market at any higher price. He submits that for the purpose of affixing the MRP drug samples are sent to Drug Authorities, who finalize the MRP and such control samples are returned to the manufacturers and he is under a legal obligation to keep the same for a period of three years. He submits that if any medicine manufacturer sells the drugs at higher MRP then the one fixed by Drug Control Authority, he is liable to action under the relevant Act. As such he submits that the MRP finalized by the Drug Authorities, which was available by way of control samples was required to be adopted for the purpose of calculation of duty. He also raised the issue of time bar and imposition of penalty.

4. Learned AR appearing for the Revenue reiterated reasoning of the Authorities below.

5. The appellant have not disputed the fact that they are required to pay duty on the MRP affixed on the medicines in terms of Section 4A of Central Excise Act. While adopting MRP for the purpose of calculation of differential duty, Revenue has referred to and relied upon the computer printout whereas the assessee's contention is that MRP affixed by the Drug Control Authority is required to be adopted. There is no doubt that all the medicines are under the strict control of the Drug Control Authority and in terms of DPCO, the prices are required to be affixed by the Drug Control Authority. No manufacturer of drug/formulation/medicines can sell his goods at a rate higher than the one fixed by the Drug Authorities. Though the demand in the present case relates to past clearances but the control samples available with the assessee at the relevant time would have reflected upon the MRP finalized by the Drug Authorities. As per the learned advocate, such MRP was placed before the Adjudicating Authority but he has preferred to choose the MRP reflected in printout.

We do not find any merit in the above stand of the Revenue. Drug Controller Authorities being the ultimate authority having the jurisdiction to fix the MRP, it is the said MRP which is to be adopted for the purpose of payment of excise. We also find in case of any violation of MRP affixed by the Drug Authority they would liable to action which may include a serious action of prosecution also. There is no such action by the Drug Control Authorities against the assessee thus giving credence to their stand that they have sold various medicaments on the basis of MRP fixed by the Drug Authorities.

6. In view of the above discussion, we set aside the impugned order and remand the matter to Adjudicating Authority for recalculation of duties by referring to the MRP affixed by the Drug Control Authorities. The appellant would cooperate with the Adjudicating Authority and would place all the relevant facts before him. As we have remanded the matter, the issue of limitation and imposition of penalties can be raised before the Adjudicating Authority.

7. Both the appeals are disposed of in above terms.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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