FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 03/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71023/2016-EX[DB] dated 27/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2252/2010	STADMED PVT LTD C-18, SAROJINI NAGAR, INDUSTRIAL AREA, LUCKNOW. (U.P.)

Name and Address of Respondent

2 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

Copy To

3 Advocate(s) / Consultant(s):

S. N. SRIVASTAVA, ADV.
C-5, SECTOR - B, ALIGANJ,
LUCKNOW,
UTTAR PRADESH

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

23-11-16

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/2252/2010-EX[DB]

Arising out of Order-in-Appeal No.231-CE/LKO/2009 dated 21.12.2009 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Stadmed Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT: 27.10.2016

FINAL ORDER NO.- 71023/2016

<u>Per Mr. Anil G. Shakkarwar:</u>

The present appeal is filed by the Appellant, M/s Stadmed Pvt. Ltd., against Order-in-Appeal No.231-CE/LKO/2009 dated 21.12.2009 passed by Commissioner (Appeals).

2. The issue involved in the present appeal is interpretation of provisions of Section 4A of Central Excise Act, 1944. The appellant manufactured P.P. Medicines falling under Chpater Heading 3003 of Schedule to Central Excise Tariff Act, 1985. Admittedly, the goods covered by the said case are covered under notification issued under Sub-Section 1 of Section 4A of Central Excise Act, 1944. The appellant cleared the goods under his invoices during the period from 29.04.2004 to 10.03.2007, which was bulk supply to institutional consumers like Hospitals. They paid duty on said goods, on the basis of value arrived at by following the provisions of Section 4 of Central Excise Act, 1944, though, the goods were specified under Notification issued under Sub-Section 1 of Section 4A of said Act. Therefore, by invoking the proviso to Sub-Section 1 of Section 11A of Central Excise Act, 1944, a show cause notice was issued on 29.03.2008, demanding Central Excise duty amounting to Rs.64,061/-. The demand was confirmed through Order-in-Original dated 31.03.2009, equal amount of penalty was imposed on the appellant. Aggrieved by the said order, appellant preferred appeal before Ld. Commissioner (Appeals). Ld. Commissioner (Appeals) through Order-in-Appeal No.231-CE/LKO/2009 dated 21.12.2009,

dismissed the appeal. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. The appellant contended that Para 6 of Circular No.625/16/2002-CX dated 28.02.2002 issued by Central Board of Excise and Customs clarified that in respect of all goods (whether notified under Section 4A or not) which are not statutorily required to declare the retail sale price on the packages under the provisions of the standards of Weights and Measures Act, 1976, or the Rules made thereunder valuation shall be done under Section 4 of Central Excise Act, 1944 and also stated that thus, there could be instances where same notified commodity would be partly assessed on the basis of MRP under Section 4A and partly on the basis of normal price i.e. transaction value under Section 4 of the said Act. They have also submitted that said circular was brought to the notice of Original Authority as well as Appellate Authority. They further argued that they were not required to declare retail sale price on the packets covered by such invoices in respect of which show cause notice was issued. They further pleaded that they followed the circular issued by CBEC and they had no intention to evade duty.

4. The ld. DR has supported the Order-in-Original and Order-in-Appeal.

5. We have considered the rival contentions. The said Circular dated 28.02.2002 at Para 6 is reproduced below:-

"It is, therefore, clarified that, in respect of all goods (whether notified under Section 4A or not) which are not statutorily required to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measures Act, 1976, or the rules made thereunder or any other alw for the time being in force, valuation will be done U/s 4 of the C.E. Act, 1944 [or under Section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity]. Thus, there could be instances where the same notified commodity would be partly assessed on the basis of MRP U/s 4A and partly on the basis of normal price (prior to 01.07.2000) or transaction value (from 01.07.2000), U/s 4 of the C.E. Act, 1944."

5.1 We have also noted that the show cause notice was issued by invoking proviso to Sub-Section 1 of Section 11 A of Central Excise Act, 1944. We find that the requirement under the said proviso is to separately establish intention to evade payment of duty for invoking said proviso. We find that the appellant have followed the Circular dated 28.02.2002 issued by CBEC, therefore, intention to evade payment of duty has not been established. We, therefore, hold that impugned show cause notice is not sustainable for the reason that intention to evade payment of Central Excise duty is not established ~~as~~ a result, we set aside the impugned Order-in-Original and Order-in-Appeal and allow the appeal. The appellant shall be entitled to consequential relief.

(Dictated and Pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

16.11

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001