CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH, COURT NO. 2

Central Excise Appeal No. 23337 of 2014

(Arising out of Order-in-Appeal No. 439/2014 - CE dated 30.07.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Srushti Pharmaceuticals Pvt. Ltd.
Plot No. 154, 10th Main, 3rd Phase,
Peenya Industrial Area, Peenya,
Bangalore – 560 058. ……….**Appellant(s)**

VERSUS

The Commissioner of Central Excise
Bangalore II Commissionerate,
P.B. No. 5400, C.R. Building,
Queen's Road,
Bangalore – 560 001. ………..**Respondent(s)**

WITH

Central Excise Appeal No. 23835 of 2014

(Arising out of Order-in-Appeal No. 553/2014 - CE dated 18.09.2014 passed by the Commissioner of Central Excise (Appeals - I), Bangalore.)

M/s. Srushti Pharmaceuticals Pvt. Ltd.
Plot No. 154, 10th Main, 3rd Phase,
Peenya Industrial Area, Peenya,
Bangalore – 560 058. ……….**Appellant(s)**

VERSUS

The Commissioner of Central Excise
Bangalore-II Commissionerate,
P.B. No. 5400, C.R. Building,
Queen's Road,
Bangalore – 560 001. ………..**Respondent(s)**

Appearance:

Mr. Rajesh Chandra Kumar Rohra, Senior Advocate with
Ms. Sakhee Mehta, Advocates for the Appellant.
Mr. Akshay Kumar, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20237 - 20238 /2025

Date of Hearing: 31.01.2025

Date of Decision: 31.01.2025

Per: Pullela Nageswara Rao

The issue in the present appeals is regarding valuation of the 'physician samples' manufactured by the Appellant and sold on principal to principal basis to other pharmaceutical manufacturers/brand owners of such products.

2. The facts in brief are M/s. Srushti Pharmaceuticals Pvt., Ltd, the Appellant is manufacturing 'physicians samples' under 'principal to principal' basis for other 'pharmaceutical manufacturers/brand owners of the medicaments, who have in terms of the principal to principal contract entered with the Appellant, require the Appellant to manufacture and sell to them, 'physician samples' for use by them for marketing their medicament products. Since the transaction value was as per the contract between the 'principal to principal', Appellant had discharged the Central Excise duty liability by adopting the transaction value under Section 4 of the Central Excise Act, 1944. However, the department, alleging that the method of valuation adopted by the Appellant is not proper on the ground that Appellant had sold 'physician samples' and the same were intended for 'free supply' to physicians, hence the argument advanced by the Appellant nor the case laws relied upon by the appellant are not relevant in the instant case and a show

cause notice was issued. Accordingly, the Adjudication authority considered the issue for the periods, December 2011 to May 2012 and June 2012 to February 2013 and confirmed the demand of duty along with interest and also imposed penalty, Aggrieved by said orders, appeals were filed before the Commissioner (Appeals) and the Commissioner (Appeals) as per the impugned Order-in-Appeal No. 439/2014-CE dated 30.07.2014 (Appeal No. E/23337/2014) and Order-in-Appeal No. 553/2014-CE dated 18.09.2014 (Appeal No. E/23835/2014) upheld the orders issued by the Adjudication authority. Aggrieved by said impugned orders, present appeals are filed, and the details are as follows.

Sl.No.	Appeal No. OIA No.	Period	Amount involved (Rs.)
1	E/23337/2014 439/2014-CE	December 2011 to May 2012	Duty: 1,36,670/- under the Section 11A of CEA, 1944 Penalty: 1,36,670/- under Section 11 AC of the CEA,1944 read with Rule 25 of CER, 2002
2	E/23835/2014 553/2014-CE	June 2012 to February 2013	Duty: 28,542/- under the Section 11A of CEA, 1944 Penalty: 28,542/- under Section 11 AC of the CEA,1944 read with Rule 25 of CER, 2002

3. Since the issue involved in the 2(two) Appeals is common they are being disposed by this order.

4. The Appellant in the appeal memorandum submits that; even though the 'Patent and Proprietary' (P&P) Medicaments in respect of which the 'physician samples' were manufactured by the Appellant are notified for the propose of Section 4A, of the Central Excise Act, 1944, [Section 4A-Valuation of excisable goods with reference to retail sale price], the physician samples cleared are not required to be affixed with

'Maximum Retail Price (MRP)' as the same are not meant for 'sale' and therefore the question of discharging duty under Section 4A, ibid, does not arise. The Learned Counsel further submits that as per the clarification issued by the Board vide Circular No. 625/16/2002-CX dated 28.02.2002, there is no statutory requirement under the Standard of Weights and Measures Act, 1976 to declare the 'Retail price' on the packages, if it is meant as 'physician samples' and no 'MRP' to be marked, since it is prohibited from being sold. Thus, the issue of valuation of 'physician samples' would have to be determined under Section 4 of the Act, ibid and that the Board's Circular No. 813/10/2005-CX dated 25.04.2005 also recognized that 'free samples' are also to be valued under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The Learned Counsel further submits that applying the Board Circular requiring that the value of 'physician samples' should be determined under Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, by taking into consideration deemed value under Section 4A(1), despite the availability of transaction value under Section 4(1)(a) of the Act, *ibid* is against the statutory provisions in as much as Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is only a general Rule and provides a machinery provision for adjustment in value on account of difference in the date of delivery. As regards reliance on the decision of this Tribunal in the matter of **M/s Amazon Drugs Pvt Ltd Vs. CCE, vide Final Order No. 20687/2023 dated 14.07.2023**, the Ld. Counsel submits that the said case relates to Appellant's clearance directly of 'physician samples' for itself and therefore applying the assessable value @ 115% or 110%

of cost of production under Rule 8 of the Valuation Rules was upheld. However, it was not a case of manufacture and clearance of 'physician samples' on a principal to principal basis under a transaction value under Section 4(1)(a) of the Act, ibid, as is in the present case.

5. The Ld. Counsel for the Appellant during the hearing submits that; the issue is no more *res integra* and the transaction value adopted by the Appellant merits acceptance in view of the decision of the Hon’ble Supreme Court in the matter of **CCE, Surat Vs. M/s Sun Pharmaceutical Industries Ltd-2015 (326) E.L.T 3 SC).** Further, he submits that this Tribunal in appellant's own case has allowed the appeals in Excise Appeal Nos. E/25230, 25231, 25232/2013 vide Final Order No. 20006-20008/2025 dated 03.01.2025.

6. The Ld. Authorised Representative (AR) for the Revenue reiterated the findings of the Adjudicating & Appellate Authority.

7. Heard both sides and perused the records.

8. We find that as submitted, the issue is no more *res integra*. The Hon’ble Supreme Court in the matter of **CCE, Surat Vs. M/s Sun Pharmaceutical** (supra), categorically held that:-

> *"10. As mentioned above, the assessee had put up the defence that since physician samples were not meant for sale by distributors but were to be given free of cost to the physicians, the assessee had charged lesser price. This statement of the assessee had not been doubted. The only reason in the show cause notice given was that since the physician samples were given free of cost by the distributors and no price was charged, the case was not covered by the provisions of Section 4(1)(a) of the Act. This is clearly fallacious and wrong reason. The transaction in question was between the assessee and the distributors. Between them, admittedly, price was charged by the*

assessee from the distributors. What ultimately distributors did with these goods is extraneous and could not be the relevant consideration to determine the valuation of excisable goods. When we find that price was charged by the assessee from the distributors, the show cause notice is clearly founded on a wrong reason. The case would squarely be covered under the provisions of Section 4(1)(a) of the Act. In view thereof, the Central Excise Rules would not apply in the instant case."

9. We find that the facts of the instant case are similar to the issue decided by the Hon'ble Supreme Court in the matter of **CCE, Surat Vs. M/s Sun Pharmaceutical** (supra), therefore covered by the above judgment, further this Tribunal in appellant's own case has allowed the appeals in Excise Appeal Nos. E/25230, 25231, 25232/2013 vide Final Order No. 20006-20008/2025 dated 03.01.2025, hence the appeals are sustainable.

10. In view of the above discussion the appeals are allowed with consequential relief, if any in accordance with law.

(Operative portion of the order was pronounced in open court on 31.01.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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