CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/638/2008-DB, E/639/2008-DB

[Arising out of Order-in-Appeal No. 190/2008 dated 29/05/2008 passed by the Commissioner of Central Excise, Bangalore]

[Arising out of Order-in-Appeal No. 191/2008 dated 29/05/2008 passed by the Commissioner of Central Excise, Bangalore]

Embiotic Laboratories Pvt. Ltd.
No.56/1, Sreegandhakavalu,
Kottigepalya, Magadi Road, Bangalore

Embiotic Laboratories Pvt. Ltd.
No.20C, Kumbalgodu Industrial Area,
I Phase, Kumbalgodu, Mysore Road,
Bangalore – 560 074

Appellant(s)

Versus

Commissioner of Central Excise
And Service, Bangalore-III
PB.No.5400, Queens Road,
Central Revenues Building,
Bangalore - 560 001
Karnataka

Respondent(s)

Appearance:

Shri M.S. Nagaraja, Advocate
No.1010, 2nd Floor,
Above Corp. Bank, 26th Main, 4th T Block, Jayanagar
Bangalore - 560 041
Karnataka

For the Appellant

Shri Pakshirajan, Assistant Commissioner (AR)

For the Respondent

Date of Hearing: 08/02/2018
Date of Decision: 08/02/2018

CORAM:
HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20147 - 20148 / 2018

Per: JUSTICE (DR.) SATISH CHANDRA

The present appeals have been filed against Orders-in-Appeal No. 190 & 191/2008 dated 29/05/2008. The brief facts of the case are that the appellant is engaged in the manufacture of pharmaceutical products and clearing the same under MRP based valuation as per Section 4A of the Central Excise Act, 1944. The appellant is supplying the goods to the customer on payment of duty; but a certain quantity is also supplied free of cost, under Bonus/Sales Promotion Scheme. The appellant paid the duty on the extra quantity supplied by adopting the MRP and later, it was found that duty is not payable on the free supply of the quantity and accordingly, the refund was claimed. It was denied by the lower authorities. Being aggrieved the appellant has filed the present appeals.

2. With this background, we heard Shri M.S. Nagaraja, the learned counsel and Shri Pakshirajan, AR.

3. After considering the submissions of both sides and on perusal of record, it appears that in the case of ***Vinayaka Mosquito Coil Manufacturing Co. Vs. CCE, Bangalore – 2004 (174) ELT 107 (T-Bang.),*** the Tribunal observed that Section 4A is not attracted where the goods are supplied free of cost as no element of sale is involved. So, the extra supply with the main item without cost attracts no excise duty. The

same decision was followed by the Hon'ble Supreme Court ***(2005 (181) E.L.T. A183 (SC).***

3.1. Further, the Hon'ble Supreme Court in the case of ***CCE, Bangalore III Vs. Himalaya Drug Company – 2015 (324) E.L.T. 9 (SC)*** observed that the free supply of goods under the Sales Promotion Scheme does not attract the provision of Section 4A of the Central Excise Act because it was supplied free of cost.

3.2. By following the decision of the Hon'ble Supreme Court, we are of the view that the free supply of the quantity along with main product in the same price is not attracting the provision of Section 4A. In other words no excise duty is payable on the free supply of the product under the Sales Promotion Scheme.

4. Regarding the refund, we remand the matter to the original authority to examine the same in depth after considering the entire material available on record but after providing reasonable opportunity to the appellant. Fresh evidence may be admitted as per law. In the result, the impugned orders are set aside and both the appeals are allowed by way of remand.

(Order Dictated in Open Court on **08/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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