IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/393/2010

(Arising out of Order-in-Appeal No.69/2010 (P) dated 18.3.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Shasun Pharmaceuticals Ltd. Appellant

Vs.

Commissioner of Central Excise, Puducherry Respondent

Appearance

Shri R. Alwan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.05.2018**

Final Order No. **41548 / 2018**

Per Bench

Brief facts are that the appellants who are engaged in manufacture of Ibuprofen and its derivatives were issued show cause notice dated 20.2.2008 alleging that they have not included in the handling charges in the assessable value while clearing the final products. After due process of law, the original authority confirmed the demand, interest and imposed penalties, which was upheld by the Commissioner (Appeals). Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri R. Alwan submitted that it is not clear from the show cause notice as to whether the department is raising the demand on the handling charges to be included in the transaction value or whether the demand is raised being transportation charges for transport of goods from factory to the consignment agent. He submitted that the place of removal was the premises of the consignment agent. Referring to para 4.2 of the Order in Original, he submitted that the original authority has held that the handling charges is nothing but transportation charges from the assessees factory to consignment agent. Similar view has been taken by the Commissioner (Appeals) also. The show cause notice as well as the orders has been passed by the authorities below on assumptions and presumptions. Merely because the credit note was issued to the appellant as charges reimbursed by the buyer M/s. J.B. Khokhani (consignment agent), the department has assumed that these are handling charges and has to be included in the assessable value. There is no evidence that the appellant has collected such handling charges. In fact, the confirmation of demand is observing that such charges are nothing but transportation charges from the factory of consignment agent which is not be included in the

assessable value. He prayed that the demand cannot sustain on merits.

3. The ld.counsel also argued on the ground of limitation and submitted that the period involved is from 2005 - 2006 and the show cause notice has been issued on 20.2.2008 alleging suppression of facts. The figures for raising the demand has been taken from the accounts of the appellant and therefore it cannot be said that the appellant has suppressed any facts.

4. The ld. AR Shri A. Cletus supported the findings in the impugned order.

5. Heard both sides.

6. We find that the demand has been raised in para 4 of the show cause notice alleging that the appellant has received additional consideration in the form of handling charges and that such amount has to be included in the assessable value. However, on perusal of the order in original as well as the impugned order, we find that the authorities below have categorically held that such charges are nothing but transportation charges from the assessee's factory to the consignment agent. The place of removal being the premises of the consignment agent, the transportation charges if any, from the factory to the consignment agent cannot form part of the assessable value. Since there is a fundamental difference

in the allegation raised in the show cause notice as well as the confirmation of demand, we are of the view that the demand cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex