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

Appeal Nos. E/725 to 727/2007

(Arising out of Order-in-Appeal Nos. 126, 127 & 128/2007 (M-II) dated 25.7.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Twenty First Century Pharmaceuticals Pvt. Ltd. — Appellant

Vs.

CCE, Chennai – II — Respondent

Appearance

Shri S. Muthuvenkataraman, Advocate for the Appellant
Shri S. Nagalingam, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **02.01.2017**

Final Order Nos. 40019-40021/2017

Per D.N. Panda

From 7.1.2005, P or P medicines were notified under Section 4A of Central Excise Act, 1944 for MRP assessment. Appellant says that the goods which are meant for sale shall be subjected to MRP but the physician sample cleared by it not being meant for sale in retail, valuation of the goods under Section 4A shall not be resorted to but Section 4 shall apply.

2. Both sides are on controversy as to whether the " physicians sample" not meant for sale shall be valued under Section 4 or 4A of Central Excise Act,1994. While Revenue's show cause notice is to value the goods under Section 4A, assessee says that the goods shall be covered under Section 4 of the Central Excise Act, 1944.

3. In view of the above controversy, one of the show cause notices at page 35 of the appeal folder No. E/725/2007 is examined. The allegation of Revenue therein is that from 7.1.2005 P or P medicines were subjected to Section 4A levy Therefore "physicians sample" Cleared shall be liable to duty under section 4A of the above said Act.

4. Revenue says that Circular No. 915/5/2010-CX dated 19.2.2010, was issued by the Board for valuation of above goods under the Excise Valuation Rules, 2000 and most particularly following the guide line stated in Circular No. 813/10/2005-CX dated 25.4.2005. The Circular No. 813 dated 25.4.2005 says that the provision contained in Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2004 shall apply to value the "physicians sample".

5. In view of the Board's clarification that the goods of above ~~lined~~ kind shall be governed by Rule 4 of the Valuation Rules it follows that the physicians sample shall be governed

by section 4 of Central Excise Act, 1944 for valuation. There is no ambiguity to the this proposition of law.

6. In the result, all the appeals are allowed. holding that "physicians sample" shall be valued under section 4 of Central Excise Act 1994.

7. Learned AR at this stage points out that valuation is to be made following Rule 4 of the valuation Rule. But we are not able to find any such proposition in the show cause notice. Therefore, we are of the view that the adjudication should not travel beyond the terms of the show cause notice.

(Dictated and pronounced in open court)

04/01/2017

4.1.2017

(MADHU MOHAN DAMODHAR)
Technical Member

(D.N. PANDA)
Judicial Member

Rex/Rkp

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai