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

E/00078/2006

[arising out of Order-in-Appeal No.11/2005 (M-II)(D), dated 20.12.2005 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s.CHOLAYIL PHARMACEUTICALS PVT. LTD. APPELLANT

Versus

(PORT-IMPORT)

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II RESPONDENT

Appearance:

For the Appellant Shri C. Saravanan, Adv.
For the Respondent Shri A. Cletus, ADC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Judicial Member
Hon'ble Shri V. Padmanabhan, Technical Member

Date of hearing **15-06-2017**
Date of pronouncement 20-06-2017

FINAL ORDER NO. 41030/2017

Per Bench:

The appeal is against Order-in-Appeal No. 11/2005 (M-II)(D), dated 20.12.2005. The appellant is a manufacturer of toilet soaps under the brand name of 'VIHA' for which they availed SSI exemption under Notification No.8/2003-CE, dated 01.03.2003, for the financial year 2003-04. In addition to the Unit at Gummidipoondi, Chennai, the appellant also has Unit in Pondicherry, Bangalore and Goa, where they manufactured toilet soaps under the brand name of "MEDIMIX" Ayurvedic Soap. The Goa Unit was manufacturing the soap using power and hence the goods were classified under 3401.90 attracting 16%. However, in Pondicherry and Bangalore Units they are

Padmanabhan

manufacturing "MEDIMIX" soap without aid of power and hence classified under 3401.12 attracting 'nil' rate of duty. Taking the view that the clearances of all excisable goods in respect of all four Units have to be taken for computation of aggregate value of clearances, the department found that such value exceeded Rs.300 lakhs in the financial year 2002-03.. Accordingly, show-cause notice was issued proposing to deny SSI benefit in the Chennai Unit and demand duty of Rs.2,15,719/- for the financial year 2003-04. While deciding the matter, the original authority dropped the demand. However, when Revenue carried the matter to Commissioner (Appeals), the demand was upheld. Against this impugned order, the present appeal has been filed.

2. With the above background, we have heard Shri C. Saravanan, Advocate for the appellants and Shri A. Cletus, ADC (AR) for the Revenue.

3. The appellant has agitated the following grounds:-

Para 3A(b) of the Notification No.8/2003-CE, clearly states that "*clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of para 4*" are not to be included for determining the aggregate value of clearances of all excisable goods during the preceding financial year. From the Pondicherry and Bangalore Units, soap was cleared with the brand name MEDIMIX belonging to Mrs. M.K. Sowbagyam. Since such clearances bearing the brand name of another person will not be eligible for the benefit of notification, the value of such clearances cannot be reckoned for the purpose of para 2(vii). The fact that such branded goods were incidentally cleared at 'nil' rate of duty has no relevance as it is not entitled for the SSI exemption. Hence, the Commissioner (Appeals) has erred in concluding that the value of exempted goods "actually cleared at 'nil' rate of duty" has to be included while computing aggregate value of clearances of Rs.300 lakhs during the previous financial year.

4. Heard both sides and perused the records.

5. The appellant has got four Units manufacturing soaps — at Pondicherry, Bangalore, Goa and Chennai. The dispute is with reference to Chennai Unit. In the impugned order, it has been held that the Chennai Unit will not be eligible for the benefit of SSI exemption for the financial year 2003-04 for the reason that in the financial year 2002-03, the aggregate value of clearances of all excisable goods for hom consumption by the appellant from all its factories has exceeded Rs.300 lakhs. This gap of Rs.300 lakhs has been specified in clause 2(vii) of the notification. For computing such aggregate value, it is not disputed that the value of clearances made by Goa Unit on payment of full rate of duty without availing the exemption need not be included. The dispute is with reference to the value of clearances of MEDIMIX soap from Pondicherry as well as Bangalore Units without payment of duty at 'nil' rate (Tariff rate). It is the claim of the appellant that such goods will not be entitled to the benefit of SSI exemption, (since they were the brand name of another person) and hence the value of such clearances will not be inclusible under para 2 (Vii).

6. It is pertinent to note that Notification NO.8/2003-CE, dated 01.03.2003 was amended by Notification No.30/2003-CE dated 01.04.2003 in which para 3 of the notification was substituted and

Customs, Excise & Service Tax Appellate Tribunal para 3A was inserted. The substituted para 3 dealt with the methodology for computing the aggregate value of clearances of Rs.100 lakhs in any financial year upto which SSI benefit is allowable. Para 3A specifies the value of clearances which shall not be taken into account while computing the aggregate value of clearances of all excisable goods for home consumption mentioned in para 2 (vii) of the notification. We reproduce below the relevant part of para 3A:-

"(a) ... ...

(b) clearances bearing the brand name or trade name of another person which are ineligible for the grant of this exemption in terms of para4;

(c) ... ..."

6.1 The core issue for decision in the present case is whether the clearances made from Pondicherry, Bangalore Units with MEDIMIX brand, cleared at 'nil' rate of duty under Tariff rate will be excludible. Para 4 of the notification specifies that the exemption under the notification shall not be applicable to goods bearing the brand name of another person.

6.2 When the scheme of the SSI notification is considered as a whole, it is seen that branded goods which are not eligible for the benefit of the notification are to be cleared on payment of full duty without availing such exemption. Para 2 (vii) enforces a cap of Rs.300 lakhs in the preceding financial year, for the aggregate value of clearances of all excisable goods. It is evident, by reading the notification as a whole that the limit of Rs.300 lakhs is to include clearance of even exempted goods (subject to exclusion of Rule 3A). By concomitant reading of 3A(b) with para 4, the picture which emerges is that if branded goods are cleared on payment of duty

Customs, Excise & Service Tax Appellate Tribunal without exemption, such value of clearances are not includible in para 2 (vii), but it should include value of all goods cleared under exemption or at 'nil' rate of duty. 7. The learned counsel for the appellant has relied upon the Apex Court's decision in the case of *Vir Rubber Products P. Ltd Vs Commissioner of Central Excise, Mumbai-III* reported in *2015 (318) E.L.T.578 (S.C.)*. On perusal of the above case law, we find that the same is not applicable to the present case, inasmuch as, the Apex Court's decision is in the context of the earlier SSI Notification No.1/93.

8. In view of the above discussions, we conclude that to determine the aggregate value of all clearances for the year 2002-03, the value of clearances of MEDIMIX soap from Pondicherry and Bangalore Units at 'nil' rate of duty will need to be included for the purposes of para 2 (vii). When such values are to be excluded, the appellant becomes ineligible for the benefit of the notification in 2003-04 in respect of the Chennai Unit. In view of these discussions, the impugned order is upheld and the appeal is dismissed.

(To be pronounced in open court on 20/6/17)

(V. PADMANABHAN)
TECHNICAL MEMBER

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

ksr
16-07-2016

Customs, Excise & Service Tax Appellate Tribunal

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