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

E/178/2007 & E/302/2007

(Arising out of Order-in-Appeal No. 75/2006 dated 29.11.2006 and OIA No. 5/2007 dated 08.02.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy).

M/s. Pharm Products Pvt. Ltd. : Appellants

Vs.

CCE & ST, Trichy : Respondent

Appearance

Shri C. Saravanan, Adv.,
For the appellant

Shri S. Govindarajan, 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: 31.01.2017

FINAL ORDER No. 40152-40153/2017

Per: D.N.Panda,

Ld. Counsel submits that physician samples were cleared adopting the procedure prescribed by Rule 8 of the Central Excise (Determination of price of excisable goods) Rules, 2000 (hereinafter referred to the 2000 Rules) in view of applicability of

Rule 11 thereof. Such a contention of the appellant was not accepted by Revenue and Department made valuation of above goods under Rule 4 of the said 2000 Rules. There arose an anomaly.

2. Where valuation of the excisable goods is not determinable, Rule 11 comes to the rescue of Revenue. Therefore, the guidelines prescribed by that rule, that the value shall be determined under Rule preceeding thereto shall apply in consistency to arrive at a reasonable figure for the assessment.

3. Rule 8 deals with the goods where goods are not sold but are used for captive consumption by the manufacturer or on its behalf in the production of the other articles and a nominal percentage of profit has been prescribed to be added to the cost of production or manufacture to arrive at the assessable value. Whereas Rule 4 prescribes that value shall be determined as that prevails at the time of sale.

4. Present case is not the case of captive consumption. Appellant pleads that Rule 4 is not applicable for the reason that the physician samples were not meant for sale.

5. In order to resolve the controversy, valuation of the physicians sample be made applying CAS-4 which has been prescribed by the Board to be applicable from 2003 and assessable value of such goods determined. This shall serve the useful purpose of

law, since cost of production can be determined applying the standards prescribed by the National Institute.

6. With the above direction, both the appeals are remitted back to the ld. Adjudicating authority to hear the appellants afresh in respect of valuation of physician samples applying CAS-4, recording pleading of the appellant both on fact and law and pass a reasoned and speaking order.

7. In the result, both the appeals are remanded.

(Dictated and pronounced in open Court)

06/02/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

3/2/2017

(D.N. PANDA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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