

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
CHENNAI**

REGIONAL BENCH - COURT No.III

Excise Appeal No.40452 of 2015

(Arising out of Order-in-Appeal No.13/2014(P) dated 01.12.2014 passed by Commissioner of Central Excise (Appeals-II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai-600 034)

M/s.Hindustan Unilever Limited

.... Appellant

Off NH 45-A,
Vadamangalam Road,
Vadamangalam, Tirubuvanai,
Puducherry-605 102

VERSUS

The Commissioner of GST & Central Excise

...Respondent

Puducherry Commissionerate
No.1, Goubert Avenue Beach Road,
Puducherry-605 001.

APPEARANCE:

Shri Siddharth Sriram, Advocate, for the Appellant
Shri Anoop Singh, Authorised Representative, for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI.C.S, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40507/2024

DATE OF HEARING : 16.04.2024
DATE OF DECISION : 30.04.2024

Per Ms. Sulekha Beevi. C.S.

Brief facts are that the appellant is engaged in the manufacture of shampoos falling under Chapter 33 of the Central Excise Tariff Act, 1985. The appellant was clearing shampoo in packaged form determining the value under Section 4, as well as Section 4A of the Central Excise Act. The assessable value of shampoos in packing of more than 10ml was determined by the appellant on the basis of Retail Sales Price (RSP) in terms of

Section 4A of Central Excise Act, whereas, the assessable value of shampoo in packing of 10ml and less than 10ml was determined in terms of Section 4 of the Central Excise Act, in accordance with Rule 34 of the Standards of Weights and Measures (Packaged Commodity) Rules, 1977 (SWMPCR, 1977).

2. It was noted by the department that the appellant cleared the shampoos in pouches/sachets without indicating any measure or weight on it and therefore it appeared that the appellant is not eligible for the exclusion provided under said Rule 34 of SWMPC Rules 1977. The department was of the view that the assessable value of shampoos contained in pouches/sachets of less than 10ml has to be assessed under Section 4A itself. Show Cause Notice dated 03.01.2012 was issued to the appellant for the period from 01.12.2010 to 30.04.2011 proposing to demand differential duty to the tune of Rs.13,38,052/- by determining the assessable value of these pouches under Section 4A of the Central Excise Act, 1985. After due process of law, the Adjudicating authority confirmed the entire duty demand along with interest and also imposed penalty of Rs.3,00,000/- under Rule 25 of the Central Excise Rules, 2002.

3. The appellant preferred an appeal against such order before Commissioner (Appeals) and vide Impugned Order, the Commissioner upheld the order of adjudicating authority. Hence this appeal.

4. The Ld. Counsel, Shri Siddharth Sriram appeared and argued for the appellant. It is submitted that the appellant cleared the shampoo in sachets, weighing 10ml or less than the said quantity

under the brand name of 'Clinic Plus, 'Sunsilk' and paid the duty determining the assessable value under Section 4 of Central Excise Act, 1944. As per Rule 34 (b) of SWMR, 1977, (up to 31.03.2011) if a commodity's net weight or measure is less than 20 gms or 20ml, it is exempted from the applicability of the SWMPC Rules, 1977. Thus, there is no requirement of affixing MRP on the commodity, when the quantity is less than 20ml. Subsequently, with effect from 01.04.2011 and after the introduction of Legal Metrology Act, Rule 26(a) of Legal Metrology (Packaged Commodity) Rules 2011, exempted commodities where the net weight or measure is less than 10 gms or 10ml, under the said Rules.

5. In the present case, the sachets of shampoo is sold by weight and is less than 10ml. The appellant has paid duty on 'transaction value' under Section 4 of Central Excise Act. As per the Legal Metrology Act (Packaged Commodity) Rules 2011, there is no requirement of affixing the MRP on the sachets, since the quantity contained is less than 10 gms or 10ml.

6. It is submitted that the issue stands covered by the decision of the Tribunal in the appellant's own case, vide Final Order No.40032 of 2020 dated 28.01.2020 in Appeal No.40854 of 2013. The dispute period was from 2006 to 1.11.2010. The present period of demand is from 01.12.2010 to 30.04.2011. The Tribunal has observed that the valuation done under Section 4 is correct. The demand of duty confirmed under Section 4A is was held to be unsustainable.

7. The Ld. Joint Commissioner (AR), Shri Anoop Singh reiterated the findings in the impugned order.

8. Heard both sides.

9. The issue to be considered is whether the assessable value of the shampoo in sachets/pouches containing 10ml or less than 10 ml is to be determined under Section 4 or 4A of Central Excise Act, 1944. As per Rule 26 (a) of LMPCR, 2011, it is not required to affix MRP on a packing, when the quantity contained in such packings is 10gms or less or 10ml or less.

10. The Tribunal has considered the issue in the case of ***Sarvotham Care Ltd. Vs. Commissioner of Central Excise, Hyderabad – 2012 (286) ELT 357 (Tri.Bang.)*** and held that the valuation adopted under Section 4 of the Central Excise Act, 1944 is correct.

"7.2 A close analysis of the above decisions throws up the following ratios/guidelines for deciding when Section 4A valuation should be adopted.

(a) Merely because the goods are specified items under Section 4A (1) that by itself will not be sufficient to assess the value under Section 4A(1).

(b) "The following would be factors to include the goods in Section 4A (1) & (2) of the Act:

(i) The goods should be excisable goods;

(ii) They should be such as are sold in the package'

(iii) There should be requirement in the SWM Act or the Rules made thereunder or any other law to declare the price of such goods relating to their retail price on the package;

(iv) The Central Government must have specified such goods by notification in the Official Gazette;

(v) The valuation of such goods would be as per the declared retail sale price on the package less the amount of abatement" as held by the Hon'ble Supreme Court in the case of *Jayanti Food Processing (P) Ltd.*

(c) Even if a commodity is notified under Section 4A, if there is no statutory requirement under the law for declaring the MRP on the packages cleared by

the manufacturer, then the assessments have to be done under Section 4 and not Section 4A.

(d) The intention of the manufacturer with regard to the goods manufactured by him and the marketing pattern followed are also important to decide assessment of the goods.

(e) If it is treated as 'Multi-Piece Package', the weight of all pieces to be taken into consideration to consider the applicability of the exemption under Rule 34.

(f) If the total weight of a multi-piece retail package is more than 20 grams, the exemption under Rule 34 would not be applicable and consequently, MRP based valuation under Section 4A would apply.

(g) The exemption under Rule 34 (b) of the Rules will be available in respect of a multi-piece retail package if the total weight of all the pieces in the package does not exceed the prescribed limit as held by *Krafttech Products* (supra) and *Urison* (supra).

(h) Merely because goods in the form of liquid packed in pouches/ sachets are sold in numbers, it would not be that they are not sold by weight or volume, when each pouch/sachet contains predetermined quantity by weight/volume."

.....,,

10. From the foregoing, the following emerges:

(a) The goods in the form of liquid packed in sachets though may be sold in numbers, it cannot be said that they are not being sold by weight or volume as each sachet contains predetermined quantity of the liquid by weight as well as by volume.

(b) The intention of the manufacturer as revealed by details printed on the sachets manufactured by them and the marketing pattern followed by AMWAY indicates that the goods are meant for retail sale to the ultimate consumers.

(c) Under the circumstances, the packages under which the impugned products are sold by the appellants clearly fall within the exemption provided under Rule 34(1)(b) of the PC Rules.

(d) Though, the commodity is notified under Section 4A, there is no statutory requirement under the law for declaring the MRP on the packages cleared by the manufacturer.

(e) The packages in which the assessee clears the goods namely mono-carton and shipper bags cannot be treated as multi-piece packs but only as wholesale packs.

(f) Therefore, the assessment under Section 4 is in order.

11. Further, in the appellant's own case vide Final Order NO.40032/2020 dated 28.01.2020, the Tribunal followed the above decision to set aside the demand raised under Section 4A and held that the determination of assessable value is to be done under Section 4 of the Central Excise Act, 1944.

12. Following the decision of the Tribunal in the appellant's own case for the earlier period, we are of considered opinion that the demand under Section 4A cannot sustain. The impugned order is set aside and the appeal is allowed with consequential reliefs, if any.

(Order pronounced in open court on 30.04.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)

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