IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/2030/2011-EX(DB)

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/181/11 dated 28.04.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Indore].

M/s. Parentral Drugs (I) Ltd. ....Applicants

Vs.

C.C.E. Indore ....Respondent

Appearance:

Shri Manish Saharan, Advocate for the Appellant
Shri R.K. Manjhi, DR for the Respondent

CORAM:
Hon'ble Shri. M. V. Ravindran, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 02.03.2017

FINAL ORDER NO. 52111/2017-EX(DB)

Per M. V. Ravindran:

This appeal is directed against the Order-in-Appeal No. IND/CEX/000/APP/181/11 dated 28.04.2011.

2. Heard both the sides and perused the records.

3. The issue with appeals for consideration is whether the appellant herein is liable to discharge the duty liability in addition to the duty discharged by them in respect of the samples of medicines drawn for 'in house testing and analysis' for suitability and marketability of the medicines for sale.

4. Appellant herein is a manufacturer of pharmaceutical medicines products and in order to comply with the Food and Drugs Customs Act, has to draw samples of the medicines finally manufactured, for testing and analysis and also to retain the samples for a specific period in order analyse if there are any market complaints of the specific batch. Appellant had discharged the duty liability on the said samples drawn for test and analysis based upon the cost of production plus 10% of the cost of production. Revenue authorities wants duty on the basis of MRP of the goods cleared minus abatement.

5. Undisputedly the samples which are drawn by the appellant from the batches manufactured are within the factory premises and are used for testing and analysis in the factory premises and they are not cleared for home consumption.

6. In our considered view duty liability discharged by the appellant itself does not arise as there is no clearance of the finished goods from the factory premises. On an identical issue Hon'ble High Court of Bombay in the case of ***CCE Belapur Vs. RPG Life Sciences Ltd. 2011 (264) ELT 346 (Bom.)*** held as under:

> *"4. In the present case, the specific case of the assessee is that samples drawn for testing were not cleared out of the factory but were cleared within the factory for testing and that the said samples were consumed in the process of testing. These facts have not been controverted by the Revenue. It is not the case of the Revenue that the assessee has failed to maintain the books / accounts as required under the Rules relating to the samples drawn for testing. Where the goods are not cleared out of the factory premises but were drawn for testing within the factory*

and in fact were consumed within the factory during the process of testing, the question of demanding any duty on those samples does not arise. We draw support for this view from the decision of the Apex Court in the case of ITC Ltd. Vs. CCE Patna 2003 (151) ELT 246 (SC) particularly para 11 thereof.

5. Decision of the Tribunal in the case of Positive Packaging Industries Ltd. relied upon by the counsel for the Revenue is distinguishable on facts. In that case, the samples were cleared out of the factory and sold as scrap, whereas, in the present case, the samples are consumed / destroyed within the factory during the process of testing. Therefore, the decision of the Tribunal in the case of Positive Packaging Industries has no relevance to the facts of the present case.

6. In these circumstances, in our opinion, the decision of the Tribunal, in the facts of the present case cannot be faulted. In the result, the appeal is dismissed by answering the question in favour of the assessee and against the Revenue. There shall be no order as to costs."

7. In view of the facts and circumstances of this case as hereinabove reproduced and the authoritative judicial pronouncement, we find that the impugned order is unsustainable and liable to be set aside and we do so.

8. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

[Operative part of the order pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(M. V. Ravindran)
Member (Judicial)

Bhanu