

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 28.03.2017

Excise Appeal Nos. 1603 - 1604 of 2012

(Arising out of order-in-appeal No. 42(AKJ)CE/JPR-I/2012/513 dated 29.02.2012 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur).

M/s Bausch & Lomb Eye Care (India) Pvt. Limited Appellant

Vs.

CCE, Jaipur-I

Respondent

Appearance:

Sh. Dhruv Tiwari, Advocate for the appellant
Sh. H. C. Saini, AR for the revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order Nos. 52622 – 62523/2017

Per: **Justice (Dr.) Satish Chandra:**

The present appeal is filed against the order-in-appeal No. 41-42(AKJ)CE/JPR-I/2012/513 dated 29.02.2012 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur.

2. The brief facts of the case are that during the period under consideration (March 2008 to December 2008 and January 2009 to July, 2009), the appellant was engaged in the manufacture of Lens Care Solution falling under Tariff Heading 3307. The appellant sells ReNu lens care solution in 120 ml. bottles at the assessable value of Rs. 87 per bottle and pays duty thereon.

3. During the period in question, the appellant was selling the sample packs of ReNu lens care solution 60 ml. bottle to the distributors @ Re.1 per bottle and paid duty thereon. The distributor was giving the samples of 60 ml. bottle as a part of the welcome kit where the welcome kit was comprised of lens case and instruction kit, and was given along with the trial lenses to the customer for free as a marketing strategy to promote sales of the product.

4. The departmental authorities objected to the practice of payment of duty on transaction value of Re. 1 per bottle contending that the goods were meant to be samples and not sold. Thereafter, appellant started paying excise duty on the sample bottles under Rule 8 of the Valuation Rules i.e. cost of production plus 10% under protest. The objection raised by the Department culminated into the issuance of periodical show cause notices. The impugned notices alleged that the bottles of lens care solution cleared by the appellant were required to be valued based on the price of comparable goods i.e. half the price of 120 ml. bottle meant for retail sale, thus, accordingly, for 60 ml. bottles, the assessable value was worked upon by the Department to Rs. 43.50 per bottle & Rs.10.30 per bottle, as applicable for the respective period.

5. After hearing both the sides and on perusal of the record, it appears that an identical issue has come up before this Tribunal in assessee's own case in C.E. Appeal No. 150 of 2009 as well as in another appeal reported in 2015-TIOL-1495-CESTAT-DEL where it was observed that:-

“10. After hearing both the sides, we find that short question required to be decided in the present appeal is as to whether the value of Re. 1/- adopted by the appellant in respect of the small bottles of 60 ml. of Lens Care Solution is the correct assessable or the value has to be raised, by adopting the value of the full commercial bottle of 120 ml. We note that an identical issue was

considered by the Tribunal in the case of Sun Pharmaceutical Industries vs. CCE, Surat-II reported in 2005 (183) ELT 42 (Tri. Mumbai) = 2005-TIOL-123-CESTAT –MUM and it was held that inasmuch as the smaller packs were being sold by the assessee, though they were meant for further free distribution by the distributors, the price at which the same were being sold represents the transaction value and is required to be adopted as the assessable value in terms of the provisions of Section 4. We further find that on appeal against the said decision by the Revenue, the Hon'ble Supreme Court in the case of Commissioner of Central Ex. & Cus. Surat vs. Sun Pharmaceuticals Inds. Ltd. reported in 2015 (326) ELT 3 (S.C.) observed that in the absence of any allegation made by the Revenue that the price at which the samples meant for the distribution were being sold by the assessee to distributors was not the sole consideration, such consideration fulfils the requirement of Section 4(1)(a) of Central Excise Act, 1944. The fact that physician samples were further given free of cost by the distributors as no price was charged by the distributors, the case cannot be held to be not covered by the provisions of Section 4(1)(a) of the Act. The said argument of the Revenue would be fallacious and wrong reason. The transaction is between the assessee and their distributors at the price charged by the assessee from the distributors and what the distributors ultimately did with these goods is extraneous and cannot be the relevant consideration to determine the valuation of the excisable goods.

11. *In the present case also, we find that the Revenues entire case for enhancement of the price is based upon the fact that the distributors were giving the said packs free of cost, as a promotional scheme. Revenue has otherwise not doubted the fact that the consideration received by the assessee from the distributor is not the consideration or something more has flown back. In the absence of any such allegation much less any evidence, the ratio of law declared by the Hon'ble Supreme Court is fully applicable.*

12. *In view of the foregoing, we set aside the impugned order and allow the appeal with consequential relief to the appellant”.*

6. By following our earlier decision (supra), we allow the appeal by setting aside the impugned order. The appellant will get relief accordingly.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant

