CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 274 of 2010 & 2142/2012 with
Excise Misc. Application No. 50589/2017

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/122/12 dated 25.04.2012 passed by the Commissioner (Appeals) Customs & Central Excise, Indore**)**

DATE OF HEARING : 31.10.2017
DATE OF DECISION : 31.10.2017

M/s Sun Pharmaceutical Indus. Ltd. …. Appellants
M/s Ranbaxy Laboratories Ltd. (Rep by Sh. Hemant Bajaj, Adv)
(now M/s Sun Pharmaceutical Indus. Ltd.)

VERSUS

CCE, Indore …. Respondent
(Rep. by Sh S.K. Bansal, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. __57672-57673/2017___________

PER JUSTICE (Dr.) SATISH CHANDRA :

In the Miscellaneous Application, it is stated that assessee-Appellants, M/s Ranbaxy Laboratories Ltd., has changed its name as "M/s Sun Pharmaceutical Industries Ltd" and the same may please be taken on record. The change in the name is allowed. Registry is to do the needful in the matter. Misc. Application is allowed.

ON MERIT :

2. Both the present appeals have been filed by the assessee-Appellants against the Order-in-Appeal No. IND/CEX/000/APP/122/12 dated 25.04.2012 passed by the Commissioner (Appeals) Customs & Central Excise, Indore. The period in dispute is April 2005 to September 2006.

3. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the manufacture of medicines falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985. They were distributing free samples to the physicians, doctors, hospitals for promotion of their products. The Department noticed that the assessee-Appellants have paid short duty under Rule 4 of the Central Excise Valuation Rules, 2000. So, they were asked to deposit the balance duty by issuing a letter. The assessee-Appellants have paid the duty under protest. The Department did not issue any show cause notice for payment of the short (differential) duty or its adjustment. Hence, the assessee-Appellants have filed the refund application which was rejected by the impugned order. Being aggrieved, the assessee-Appellants have filed the appeal.

4. In the second appeal, the assessee-Appellants have filed the rebate claim and the Department adjusted certain part of the rebate claim against the differential duty demanded under the Central Excise Valuation Rules, 2002. Being aggrieved, the assessee-Appellants have filed the appeal.

5. With this background, we have heard Shri Hemant Bajaj, learned counsel for the assessee-Appellants and Shri R.K. Mishra, learned DR for the Revenue.

6. During the course of arguments, the learned counsel for the assessee-Appellants submits that when the duty was deposited under protest, it was the duty of the Department to issue the show cause notice for payment of the short (differential) duty or its adjustment. The same was not done. The Department woke up only when the refund claim was filed. Prior to it, the Department was in sleep. Similarly, interest was demanded in the second appeal through a letter but without issuance of show cause notice.

7. On the other hand, the learned DR for the Revenue justified the impugned order.

8. By considering the rival submissions, we are of the view that in the first appeal, the show cause notice was not issue for appropriating/adjustment of the demand, especially when the assessee-Appellants have deposited the amount under protest. Moreover, in the show cause notice it is mentioned that the value of the free sample should be determined under Central Excise Valuation Rules, 2002.

9. On the other hand, in the order passed by the Commissioner (Appeals), it is mentioned that "Rule 4 is not applicable because the said Rule relates to the value of 'such

goods' sold by the assessee for delivery at any other time nearest to the time of removal of goods."

10. Thus, it appears that the Department has adopted the contradictory proposition, as stated above, in the assessee-Appellants' case. When it is so, then we set aside the impugned order and remand the matter to the adjudicating authority to adopt a clear cut policy, as per law, and decide the issue afresh, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional evidence, if any, as per law.

11. Similarly, in the second appeal, the interest was demanded without issuing the show cause notice. When it is so, then we set aside the impugned order and remand the matter to the original authority to decide this issue too afresh, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional evidence, if any, as per law.

12. In the result, both the appeals filed by the assessee-Appellants are allowed by way of remand. Misc. Application stands disposed of accordingly.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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