# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

## Appeal No. E/716/2010
(Arising out of Order-in-Original No.02/2010-C.Ex dated 19.01.2010 passed by CCCE & ST, Guntur)

JOCIL Ltd ….. Appellant(s)

Vs.

CCCE & ST, Guntur ….. Respondent(s)

Appearance
Shri B.N. Gururaj, Advocate for the Appellant.
Shri Mir Anwar Mohiuddin, Asst. Commissioner/AR for the Respondent.
Coram:
**HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)**
**HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)**

Date of Hearing: 17.01.2019
Date of Decision: 17.01.2019

## FINAL ORDER No. A/30119/2019

[Order per: P.V. Subba Rao.]

1. This appeal has been filed against Order-in-Original No. 02/2010-C.EX dated 19.01.2010.

2. The appellant herein is engaged in manufacture of Fa Aqua soap as a job worker for Bajaj Corporation Ltd who gave the soaps free to their customers who in turn distributed free along with their products such as Philips CFL lamps, Bajaj Almond hair oil. As these soaps are given free there is no price. However, in order to indicate to the customers the value of the free soaps supplied the appellant printed the MRP and scored it out. It was also indicated on the wrappers that they are not for sale. A show cause notice dated 07.08.2009 was issued to the appellant demanding duty based on Retail Sale Price under Sec.4A of Central Excise Act holding that the product is liable to be valued under Sec.4A. It was also proposed to charge

interest and impose penalties on the appellant. After following due process the original authority confirmed the demand and interest and imposed penalty. Aggrieved, the appellant filed this appeal on the following grounds.

1. The retail sale price under Sec.4A makes it clear that it is the price at which the goods are sold to the ultimate consumer. In the case such as present, where there is no sale of toiletry soap, the valuation on MRP will not apply. They relied on the judgment of Trishul Research Laboratories Pvt Ltd [2002 (144) ELT 2014 (Tri-Delhi)].
2. They scored out the retail price printed on the soaps and the only purpose of mentioning this price and scoring it out is to let the ultimate buyer know the money value of the gift which he receives along with the purchase of the main article.
3. In the impugned order the Commissioner has incorrectly held that "the meaning of retail sale does not stipulate that the transaction should invariably be sale for money".
4. Since the supplied soap is used for promoting another printed product, it is a case of using the product for providing service of distribution of goods and hence such supplies are excluded from Chapter 2 of PC Rules, 1977 as sale to institutional buyers.

3. There is no case for imposing penalty as the appellant had informed the revenue prior to removing the soaps. The reasonable belief of the appellant is indicated by subsequent judgment of the Hon'ble Supreme Court in the case of Jayanti Food Processing Pvt Ltd [2007 (215) ELT 327 (SC)] wherein the Apex Court held that valuation of Kitkat supplied free along with Pepsi Cola would not be covered under Sec.4A as those goods were not sold to ultimate consumer. Accordingly, appellant prayed that the impugned order may be set aside.

4. Learned departmental representative reiterates the findings of the lower authority and asserts that since the MRPs indicated on the wrappers of the soaps, though scored out, valuation has to be done as per Sec.4A of the Central Excise Act, 1944.

5. We have considered the arguments on both sides. The facts are not in dispute; the soap in question has been manufactured by the appellant and the wrappers clearly indicate that they are not meant for sale. They do indicate MRP but scored out it clearly indicating that the price is only for information and not for sale. Sec.4A of the Central Excise Act reads as follows:

> *"**Section 4A.** Valuation of excisable goods with reference to retail sale price. -*
> *(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.*
> *(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.*
> *(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.*
> *(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -*
>
> *(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or*
> *(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture, then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section."*

6. If this soap had been manufactured for sale, it is not in dispute that they would have been covered by Sec.4A as the soaps are covered by the provisions of Legal Metrology Act and Rules and they have been notified under Sec.4A. However, in this case, the soaps have not been sold and it is evident that they were not meant for sale but were made for free supply

along with some other products. The question is whether such products also get covered by Sec.4A. CBEC Circular No.673/64/2002-CX dated 28.10.2002 held that the scored out MRP should be ignored. However, where the multi pieces are packaged into single item with MRP printed on both individual items and multi pack, if individual items have MRPs printed on them but scored out, then the MRP printed on the multipack will be taken for the purpose of valuation. In the subsequent Circular No. 813/10/2005-CX dated 25.04.2005 on the question of samples which are distributed free as a part of marketing strategy or as gifts or donations CBEC clarified that in case of free samples, the value should be determined under Rule 4 of Central Excise Valuation Rules. The Hon'ble Supreme Court in the case of Jayanti Food Processing Pvt Ltd (supra) has finally put to rest any doubts regarding valuation of excisable goods which are supplied free along with some other products. Para 29-30 of which are reproduced as follows:

> *"29. It was then suggested that the free gift by Pepsi to its customers would amount to distribution and would, therefore, be amounting to retail sale and the package of KITKAT would be retail package. However, what is material is the definition of retail sale price. The requirement of Rule 6(1)(f) is specific. It requires the retail sale price of the package be printed or displayed on the package. If there is no sale involved of the package, there would be no question of Rule 6(1)(f) being attracted. There is a clear indication in the definition of retail sale price as provided in Rule 2(r) which clearly explains that the MRP means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer. Thus, the definition of salein Section 2(v) of the SWM Act becomes relevant. Therefore, unless there is an element of sale, as contemplated in Section 2(v), Rule 6(1)(f) will not be attracted and thus such package would not be governed under the provisions of SWM (PC) Rules which would clearly take such package out of the restricted arena of Section 4A(1) of the Act and would put it in the broader arena of Section 4 of the Act.*
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> *30. Shri Lakshmi Kumaran lastly relied on Rule 34 (a) of the SWM (PC) Rules and pointed out that the case was completely covered under that Rule since firstly the package in this case specifically declared that it was specially packed for Pepsi. The thrust of the argument was that there appears such declaration on the package of KITKAT and secondly it was for the purpose of servicing Pepsi thereby satisfying both the conditions for applicability of Rule 34(a).*
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> *The Tribunal has rejected this argument in a very casual manner by observing:*
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> *"Admittedly, the situation in the present case is not covered by any of the conditions noticed in the said Rule 34."*

*Learned counsel Shri Laxmi Kumaran pointed out that there was no question of the application of SWM (PC) Rules apart from any other reasons, because of the applicability of Rule 34. We accept the argument. After-all if the contract of the chocolates was for the purpose of advertising of a particular product of the particular industry it would be covered within the expression "servicing any industry". We have already dilated upon the expression "servicing any industry" in the earlier part of our judgment. Those observations would similarly apply to the present appeal also. With the result this appeal has to be allowed by setting aside the order of the Tribunal. We accordingly allow this appeal without any order as to costs."*

7. Thus, the Hon'ble Apex Court has held that where goods are supplied free Sec.4A of the Central Excise Act will not apply. The present case is squarely covered by this decision. In view of the above, we find that the impugned order needs to be set aside and the appeal is liable to be allowed and we do so.

8. The appeal is allowed and the impugned order is set aside.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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