IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Excise Appeal No.932 of 2011

(Arising out of Order-in-Appeal No.238-239/KOL-III/2011 dated 11.08.2011 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. La-Chemico Private Limited
(Taki Road, Kadambagachi, Barasat, 24 Pgs. (N), West Bengal-743221.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

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APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75564-75565/2024

DATE OF HEARING : 19.03.2024
DATE OF DECISION : 19.03.2024

Per : ASHOK JINDAL :

Both the appeals are having common issue, therefore, both are disposed of by a common order.

2. The facts of the case are that the appellants are manufacturers of medicaments and clearing the same on payment of duty in terms of section 4A of the Central Excise Act, 1944.

3. The issue in these appeals is that whether the appellant is required to pay Central Excise duty on physician's samples in terms of section 4A of the Central Excise Act, 1944 i.e. MRP less abatement or not?

4. The said issue has been examined by this Tribunal in the case of Klar Sehen Pvt.Ltd. vs. Commissioner of Central Excise, Kolkata [2023 (8) TMI 742 – CESTAT KOLKATA], wherein this Tribunal has observed as under:-

> *"8. We observe that the issue is no more res integra. The Hon'ble Supreme Court has already decided the issue in the case of Commissioener of Central Excise & Customs, Surat Vs. Sun Pharmaceuticals Inds Ltd. reported in 2015 (326) ELT 3 (SC), wherein it has been categorically held that valuation of physician samples is ot be done as per Section 4(1)(a) of the Central Excise Act, 1944. The relevant portion of the decision is reproduced below:*
>
> *9. Central Board of Excise and Customs also issued Circular No.813/10/2005-CX dated 25.04.2005 and later another Circular in F.No.6/5/2009-DS(CX-1&4), dated 19.02.2010 was also issued clarifying the issue. The said clarification issued in Circular No.813/10/2005-CX dated 25/04/2005 is reproduced below:*
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> *10. We observe that the Appellant failed to follow the Board Circular dated 25.04.2005, which was available during the relevant period. Subsequently The Hon'ble Bombay High Court also decided the issue in the case of Indian Durg Manufacturers and others Vs. UOI reported in 2008 (@#%) ELT 22 (Bom HC). Accordingly, by following the decisions of the Hon'ble Apex Court, Bombay High Court and the Board Circulars cited above, We hold that the valuation of physician samples is to be done as per under Rule 4 of the valuation rules, 2000 based on the pro rate value of medicaments sold in the trade and valued under Section*

4A. Accordingly, we uphold the demand of duty along with interest confirmed in the impugned order."

5. We find that by way of the above cited judgement of this Tribunal it has been held that the valuation of physician sample has to be done as per Rule 4 of the Central Excise Rules, 2000.

6. Therefore, we hold that the appellants are not liable to pay Central Excise duty on physician samples in terms of section 4A of the Central Excise Act, 1944. Therefore, the proceedings against the appellant are not sustainable.

In these terms, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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