IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Excise Appeal No.95 of 2011

(Arising out of Order-in-Appeal No.51/Kol.V/2010 dated 30.11.2010 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Burnet Pharmaceuticals Private Limited
(28/5, C.N.Roy Road, Kolkata-700039)

Appellant

VERSUS

Commissioner of Central Excise, Kolkata V
(180,Shantipally,Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Shri Sudarshan Shil, Consultant for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHENICAL)

FINAL ORDER NO. 76746/2024

DATE OF HEARING : 26.08.2024
DATE OF DECISION : 26.08.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant was engaged in the manufacture and sale of P or P Medicaments. The appellant supplied physicians' samples free of cost to medical physician. The cost of physicians' samples was included in the value of P or P Medicaments, which the physicians' samples represent. The Board's Circular No.643/34/2002-CX dated 11.07.2002 clarified that the value of physicians' samples should be 115% and 110% of the cost of production/manufacture determined as per CAS-4. Accordingly, the

appellant followed the value of physicians' samples. The appellant adopted the cost data of available audited Balance Sheet in CAS-4 as cost audit was not applicable to the appellant under Companies Act, 1956. During the period, June 2003 to March, 2004, the available audited balance sheet was of 2001-02 and the cost data of this Balance sheet of 2001-02 was adopted for CAS-4 for valuation of physicians' samples removed during the period June, 2003 to March, 2004.

2.1 The show-cause notice was issued to the appellant alleging that the appellant contravened Rules 4 & 6 of the Central Excise Rules, 2002 and Rules 8 & 11 of the Central Excise Valuation Rules, 2000 with Circular No.643/34/2002-CX dated 11.07.2002 in as much as the appellant did not determine the value of physicians' samples as per this Circular and by suppression of facts for non-payment of appropriate Central Excise duty by non-observance of proper procedure of valuation with deliberate intention to evade duty, which should be recovered from the appellant.

2.2 The matter was adjudicated. The demand was confirmed.

2.3 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that as they have valued in this case, the extended period of limitation is not invokable as it is a case of value of physicians' samples, which were cleared under Central Excise Invoices and during the material period, there was no requirement to submit the Central Excise Invoices with ER-1 Return and the Department never asked for the invoices so the same were not submitted. The Central Excise Invoices are the statutory documents subject to audit and scrutiny which the Department did not do in time.

It is the submission that the clearance of physicians' samples were known to the Department, therefore, the appellant's profile, all the documents, records, returns and invoices were and the audit issued four spot memos. In that circumstances, the extended period of limitation is not invokable.

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, the value, on which the physicians' samples were cleared, were known to the Department during the course of audit itself and the periodical audit took place. In that circumstances, the show-cause notice dated 29.05.2008 during the period June, 2003 to March, 2004, is highly barred by limitation. Therefore, the appellant succeeds on limitation.

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

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm