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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 77007 of 2016

(Arising out of Order-In-Appeal No. 59/KOL-V/2016 dated 29.09.2016 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s. Rugby Pharma Pvt. Ltd.
(182, A.J.C. Bose Road, Kolkata-700014)

Appellant

VERSUS

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

R**espondent**

APPEARANCE :
Mrs. Shromona, Ghosh, Manager Accountant for the Appellant
Mr S. Dey, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75109/2025

Date of Hearing : 22 January 2025
Date of Decision: : 22 January 2025

PER R. MURALIDHAR:

The issue pertains to the adoption of assessable value when the medicaments are cleared as physician samples. The appellant adopted Rule 8 of the Valuation Rules 2000, to arrive at the Assessable Value whereas the Department was of the view that the assessable value is to be arrived at as per Rule 4 of these Rules. For the period 20/06/2005 to 06/11/2006, demand for differential duty of Rs. 1,25,907/- along with Education Cess for Rs. 2,518/- was made. After due process, the lower authorities confirmed the demand. Being aggrieved, the appellant is before the Tribunal.

2. Mrs. Shromona Ghosh, Authorized Representative of the Company submits that the appellants were only carrying on job work service to the principal manufacturer. They were following the assessable value which was done on cost construction basis as given

to them by the principal manufacturer. She further submits that admittedly, they have prepared proper invoices and paid the Excise Duty based on cost construction basis and also filed ER-1 Returns. Therefore, the lower authorities are in error in holding that the suppression has taken place and accordingly the demand has been confirmed as per the extended period provisions of Section 11A.

3. In view of the above submissions, she prays that the appeal may be allowed.

4. The Learned AR submits that it has been decided in plethora of cases that physician samples should be cleared as per the Assessable Value based on the clearance made to the third party buyers. Therefore, he justifies the confirmed demands.

5. Heard both sides the perused the appeal papers and the submissions made by both the sides.

6. We find that the issue as to under which Rule, whether Rule 4 or Rule 8 of the Valuation Rules 2000, Assessable Value to be adopted was a matter of litigation before various Tribunals and High Courts. In this proceedings, it is not the case of the Department that the appellant has cleared the goods without payment of duty. The only dispute is towards the Assessable Value adopted by the appellant.

7. We find from the records that the appellant is a small party doing the job work on behalf of the reputed Pharma Company. The client had instructed them to follow the cost construction method. They cleared physician samples after payment of Excise Duty as per this assessable value. They were simply following the instructions. It is also not disputed that the appellant was not filing the Returns before the jurisdictional authorities. We do not find that the Department has made out any case of suppression on the part of the appellant. Therefore, we hold that the Show Cause Notice issued on

19/02/2008 for the clearances made between 20/06/2006 to 06/11/2006 is time barred and is legally not sustainable.

8. Therefore, on account of time bar itself, we set aside the impugned order and allow the appeal. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja