

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

COURT No. I

Appeal No. E/846 & 847/2010

(Arising out of Order-in-Appeal No. VSK/5&6/MV/2010 dated 15.01.2010 passed by Commissioner of Central Excise (Appeals) Mumbai)

Eu-Medicaments

Appellant

Vs.

**Commissioner of Central Excise,
Mumbai V**

Respondent

Appearance:

Shri V.C. Vakharia, Proprietor
Shri Sanjay Hasija, Supdt. (AR)

for appellant
for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing : 27.04.2018

Date of Decision :

FINAL ORDER NO.....

Per: Raju

These appeals have been filed by M/s Eu-Medicaments against the confirmation of demand on "physicians samples" cleared by them.

2. Shri V.C. Vakharia, Proprietor of the appellant firm appeared in person for hearing. He was explained that the law in respect of valuation of "physicians samples" has been settled by various decisions. He was specifically asked if in the instant case whether he was selling the physicians samples to be

distributed by somebody else free of cost or he himself was distributing the physician samples free of cost. He was also asked if he was doing jobwork for somebody-else who was distributing the physician samples free of cost. He was unable to clarify the issue and no evidence regarding the said fact is on record.

3. In these circumstances, we find that the fact regarding the exact nature of clearance of physician samples needs to be ascertained and only thereafter the matter can be resolved on the basis of law settled in this regard by the Hon'ble Supreme Court in the case of *CCE & Cus., Surat v. Sun Pharmaceuticals Inds. Ltd. – 2015 (326) ELT 3 (S.C.)* and by the Hon'ble Bombay High Court in the case of *Indian Drugs Manufacturers Association v. Union of India – 2008 (222) ELT 22 (Bom.)*. The impugned order is therefore set aside and the matter is remanded to the original adjudicating authority to ascertain the facts and thereafter apply the principles laid down in the afore said case laws.

4. Appeals are allowed by way of remand.

(order pronounced in Court on.....)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

