CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Excise Appeal No. 867 of 2010

(Arising out of Order-in-Appeal No. SB/52 to 54/Th-II/10 dated 09.03.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Vardhaman Remedies Pvt. Ltd. **Appellant**
J-102, MIDC,
Tarapur Industrial Area,
Boisar, Thane 401 507.

Vs.

Commissioner of Cen. Excise, Thane-II **Respondent**
3rd floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

WITH

Excise Appeal No. 868 of 2010

(Arising out of Order-in-Appeal No. SB/52 to 54/Th-II/10 dated 09.03.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Vardhaman Remedies Pvt. Ltd. **Appellant**
J-102, MIDC,
Tarapur Industrial Area,
Boisar, Thane 401 507.

Vs.

Commissioner of Cen. Excise, Thane-II **Respondent**
3rd floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

WITH

Excise Appeal No. 1194 of 2011

(Arising out of Order-in-Appeal No. MI/AV/176&177/2011 dated 30.03.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Vardhaman Remedies Pvt. Ltd. **Appellant**
J-102, MIDC,
Tarapur Industrial Area,
Boisar, Thane 401 507.

Vs.

Commissioner of Cen. Excise, Thane-II Respondent
3rd floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

AND

Excise Appeal No. 1195 of 2011

(Arising out of Order-in-Appeal No. MI/AV/176&177/2011 dated 30.03.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Vardhaman Remedies Pvt. Ltd. Appellant
J-102, MIDC,
Tarapur Industrial Area,
Boisar, Thane 401 507.

Vs.

Commissioner of Cen. Excise, Thane-II Respondent
3rd floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

Appearance:

Shri Mehul Jivani, C.A., for the Appellant
Shri Sanjay Hasija, Superintendent and Shri Anil Choudhary, Deputy Commissioner, Authorised Representatives for the Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/**86671-86674/2019**

Date of Hearing: 03.09.2019
Date of Decision: 03.09.2019

PER: DR. D.M. MISRA

These four appeals are filed against the respective orders-in-appeal passed by the Commissioner of Central Excise, Mumbai-I.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of P & P medicaments falling under Chapter 30 of the Central

Excise Tariff Act, 1985. They manufacture the medicaments on job work basis (loan licensee basis) and also on their own account and sell it to their respective customers. In the case of their own manufactured products, even the physician samples are sold to their customers who in turn distributed free of cost. The appellants are determining the value of the medicaments sold to their customers by adopting the transaction value under Section 4(1)(a) of the Central Excise Act, 1944 when the goods were sold, but when it was manufactured on job work basis (loan licensee) valued the same by taking the cost of production + 10% as provided in Rule 8 of the Central Excise Valuation Rules, 2000. Revenue disputed the method of valuation and alleging that the physician samples cleared by the appellant should have been valued in accordance with Rule 4 of the Central Excise Valuation Rules, 2000 by adopting the pro rata value of the trade pack of the medicaments, issued notice for recovery of the total differential duty of Rs.7,16,649/- on sale of goods on principal to principal basis and Rs.5,29,080/- relating to clearance to loan licensees along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed appeal to the learned Commissioner (Appeals) who upheld the demand, interest and penalty in respect of appeal Nos. E/867/2010 and E/868/2010 for the period January 2006 to October 2006 whereas in appeal Nos. E/1194/2011 and E/1195/2011 for the period April 2005 to December 2005 only confirmed the demand and set aside the penalty. Hence, the present appeals.

3. At the outset, the learned Chartered Accountant Shri Mehul Jivani for the appellants, has submitted that the issue is no more *res integra* and settled by Hon'ble Supreme Court in the case of *CCE&C, Surat vs. Sun Pharmaceuticals Inds. Ltd. – 2015 (326) ELT 3 (SC)* relating to sale of physician samples on principal to principal basis to customers. Also, the issue of clearance of physician samples manufactured on job work basis (loan licensee) to the principal manufacturer is covered by the judgment of the Hon'ble Supreme Court in the case of *Biochem Pharmaceuticals Ind. Ltd. vs. CCE, Vapi – 2015 (322) ELT 808 (SC)*. He has further submitted that this Tribunal in the case of *Medispray Laboratories Pvt. Ltd. vs. CCE, Goa – 2017 (5) GSTL 300 (Tri.-Mumbai)*, taking note of the judgment of the Hon'ble Supreme Court, held that Rule 4 of the Valuation Rules, 2000 will not apply to the aforesaid situations.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short issue for consideration in the present appeals is whether the physician samples manufactured by the appellant on job work basis and sold on principal to principal basis to customers be valued as per Rule 4 of the Central Excise Valuation Rules, 2004 or Section 4(1)(a) of the Central Excise Act, 1944 when sold on transaction value and the goods manufactured on job work basis be assessed as per Rule 8 of the Central Excise Valuation Rules, 2000, accordingly. We find that this Tribunal following the

ratio laid down by Hon'ble Supreme Court in *Sun Pharmaceuticals Inds. Ltd.*'s case, observed in the case of *Medispray Laboratories Pvt. Ltd.* (supra) as follows:-

*"**5.1** We find that all the three appellants are manufacturing physician samples not for their own but on behalf of the buyers either on job work basis or on principal to principal basis. Therefore, the issue of valuation as regards the physician samples is not concerned with the present appellants. Rule 4 of Central Excise Valuation Rules, 2000 shall apply only in those cases where the manufacturer manufacturing the physician samples and they themselves supplying free sample in the market. In the present case, all the three appellants are not supplying physician samples free of cost either in case of job work basis or in the sale basis, the goods are sold to the principal. In such case, irrespective [of the fact that] it is physician samples, the valuation shall be governed by Section 4 of the Central Excise Act. In case of job work, the value should be in terms of principles laid down by the Hon'ble Supreme Court in the case of Ujagar Prints - 1989 (39) E.L.T. 493 (S.C.). Accordingly, the valuation shall be determined on the basis of cost of raw material + job charges including the profit of the job worker. It is not the case of the Revenue that the value determined by the appellant is less than the value to be arrived at on the principles of Ujagar Print's case.*

***5.2** As regards the physician samples manufactured and sold by Okasa Pvt. Ltd. to their principal, the transaction is on principal to principal basis. Therefore, whatever goods were sold by the appellant to their principal is correct transaction value in terms of Section 4. In both type of clearances in any circumstances, Rule 4 valuation shall not apply."*

7. We find that the aforesaid finding of the Tribunal is based on the ratio laid down by the Hon'ble Supreme Court in *Sun Pharmaceuticals Inds. Ltd.* relating to sale of physician samples on principal to principal basis to customers and *Biochem Pharmaceuticals Ind. Ltd.*'s case (supra) relating to manufacture and clearance of physician samples on job work basis to principal manufacturer.

8. Consequently, following the aforesaid precedent, we set aside the respective impugned orders and allow the appeals with consequential relief, if any, as per law.

(Pronounced in the open court)

(Dr. D.M.Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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