CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

EXCISE APPEAL NO: 1431 of 2011

[Arising out of Order-in-Appeal No: TKG/05-07/LTU/MUM/2011 dated 19th July 2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Mumbai.]

Maneesh Pharmaceuticals Ltd … ***Appellant***
D-6 S/25 T Block, MIDC, Bhosari
Pune – 411 026

versus

Commissioner of Central Excise & Service Tax (LTU) ***…Respondent***
29th Floor, Centre – I, World Trade Center, Cuff Parade
Mumbai – 400 005

WITH

EXCISE APPEAL NO: 1432 of 2011

[Arising out of Order-in-Appeal No: TKG/05-07/LTU/MUM/2011 dated 19th July 2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Mumbai.]

Maneesh Pharmaceuticals Ltd … ***Appellant***
D-6 S/25 T Block, MIDC, Bhosari
Pune – 411 026

versus

Commissioner of Central Excise & Service Tax (LTU) ***…Respondent***
29th Floor, Centre – I, World Trade Center, Cuff Parade
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AND

EXCISE APPEAL NO: 1433 of 2011

[Arising out of Order-in-Appeal No: TKG/05-07/LTU/MUM/2011 dated 19th July 2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Mumbai.]

Maneesh Pharmaceuticals Ltd … ***Appellant***
D-6 S/25 T Block, MIDC, Bhosari
Pune – 411 026

versus

Commissioner of Central Excise & Service Tax (LTU) ***…Respondent***
29th Floor, Centre – I, World Trade Center, Cuff Parade
Mumbai – 400 005

APPEARANCE:

Shri Prasad Paranjape, Advocate with Shri Mohit Rawal, Chartered Accountant for the appellant

Ms AS Parab, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86828-86830/2019

DATE OF HEARING: 08/05/2019
DATE OF DECISION: 16/10/2019

PER: C J MATHEW

M/s Maneesh Pharmaceuticals Ltd is in appeal against the duty liability of ₹ 25,72,273/-, under section 11A of Central Excise Act, 1944, for the period from March 2007 to June 2009, determined on clearance of 'physician samples' and the penalty of like amount imposed under section 11AC of Central Excise Act, 1944.

2. Learned Counsel for the appellant submits that appellant, as job-worker, had been discharging duty liability by adopting value of clearance on cost-construction basis as prescribed in rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and that on clearance effected to M/s Serum Institute, as manufacturer on account, duty was assessed on transaction value in accordance with section 4(1)(A) of Central Excise Act, 1944. He points out that the show cause notice, issued for July 2009 to June 2010, seeks recovery for the period beyond the scope of section 11A of Central Excise Act, 1944 and must be set aside as barred by limitation of time. Moreover, he contends that the issue of valuation of ‘physician samples’, supplied free of cost to buyers / principal manufacturers, has been settled by the Tribunal in *Themis Laboratories Pvt Ltd v. Commissioner of Central Excise, Mumbai [2012 (286) ELT 244 (Tri.-Mumbai)], Commissioner of Central Excise, Vapi v. Sun Pharmaceutical Industries Ltd [2017 (350) ELT 289 (Tri.Ahmd)],* which was affirmed by the Hon’ble Supreme Court by dismissal of civil appeal of Revenue, in *Medispray Laboratories Pvt Ltd v. Commissioner of Central Excise, Goa [2017 (5) GSTL 300 (Tri.-Mumba)]* and in *Commissioner of Central Excise, Bangalore – I v. Banner Pharmacaps (India) Ltd [2017 (347) ELT 686 (Tri.-*

Bang.)].

3. Learned Authorised Representative placed reliance on the decision of the Tribunal in *Goa Antibiotics & Pharmaceuticals Ltd v. Commissioner of Central Excise, Goa [2014 (314) ELT 546 (Tri.-Mumbai)]* which, according to her, has clearly held that when the ‘principal manufacturer’ directs that duty be paid on a specific assessable value and the clearances are not for captive consumption but dispatched for further free distribution, the appropriate value to be adopted for assessment is the nearest available transaction value.

4. It is seen that the Tribunal, in *re Goa Antibiotics & Pharmaceuticals Ltd*, was confronted with the peculiar circumstances wherein the value was, admittedly, not arrived at by ‘cost construction’ and the direction to the job-worker to adopt a particular value was sufficient evidence of lack of principal-to-principal relationship between the two. Clearly, the ratio of that decision is inapplicable to the entirely different set of facts herein.

5. The appellant does not clear ‘physician’s sample’ except to principal manufacturer and to M/s Serum Institute. The determination of assessable value on the basis of rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 cannot be held to apply in this circumstance.

6. As the decisions cited on behalf of the appellant, in *re Sun Pharmaceutical Industries Ltd* and *re Medispray Laboratories Pvt Ltd,* settle the dispute, we find that the impugned order is not sustainable and must be set aside

7. Appeals are allowed.

(Order pronounced in the open court on 16/10/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as07051405*