CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 840 of 2011

(Arising out of Order-in-Appeal No. PKS/565/BEL/2011dated 05.04.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III).

M/s. Softesule Pvt. Ltd. **.... Appellant**
86-A, L.B.S. Marg, Mulund (West),
Mumbai-400 080.

Versus

Commissioner of Central Excise Mumbai-III **.... Respondent**
3rd & 4th Floor, Vardan Centre, MIDC
Wagle Industrial Estate, Thane (West)-400604.

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Sanjay Hasija, Supdt. (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87239 / 2019

Date of Hearing: 03.12.2019

Date of Decision: 03.12.2019

Per: Dr. D.M. Misra

This is an appeal filed against the Order-in-Appeal No. PKS/565/BDL/2011 dated 05.04.2011 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of pharmaceutical products falling under Chapter 21 & 30 of the Central Excise Tariff Act, 1985. Alleging that the appellants had determined the assessable value incorrectly in respect of physician samples/trade samples cleared by them adopting Rule 8 of Central Excise Valuation (Determining the Prices of Excisable Goods) Rules 2000, show cause notice was issued to them proposing valuation of the said physician samples under Rule 4 of Central Excise Valuation Rules, 2000, and recovery of

differential duty of Rs. 7,01,164/- with interest and penalty for the period August 2009 to July 2010. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they have filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal, hence the present appeal.

3. At the outset, learned Advocate Shri Rajesh Ostwal for the appellants submitted that the issue of determination of assessable value of physician samples is no more *res integra* as the same is settled by the Hon'ble Supreme Court in the case of Sun Pharmaceuticals Limited's case – 2015 (326) ELT 3 (SC). Following the decision delivered by the Hon'ble Supreme Court and the judgment of this Tribunal in their own case vide order No. A/86715-86176/2019 dated 23.09.2019 this Tribunal has set aside the demand for earlier period.

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

5. We have carefully considered the submissions advanced by both sides and perused the records. The issue is no more *res integra.* Following the judgment of the Hon'ble Supreme Court in the case of M/s Sun Pharmaceuticals Limited, this Tribunal vide order A/86715-86176/2019 dated 23.09.2019 in their own case decided the issue in their favour for the earlier period.

6. Following the said precedent, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

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

(S. Srivastava)
Member (Technical)

Sidharth