CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 456 of 2012

(Arising out of Order-in-Appeal No. US/489 to 491/M-II/2011 dated 28.12.2011 passed by Commissioner (Appeals)–II Central Excise, Mumbai)

Pharmax (India) Ltd. **.....Appellant**
9 Kurla Indl. Estate,
Netaji Palkar Road,
Ghatkopar (W),
Mumbai – 400 086.

VERSUS

Commissioner of Central Excise, Mumbai -II **.....Respondent**
9th Floor Piramal Chambers, Jijibhoy Lane,
Lalbaug Parel,
Mumbai – 400 012.

WITH

Excise Appeal No. 457 of 2012

(Arising out of Order-in-Appeal No. US/489 to 491/M-II/2011 dated 28.12.2011 passed by Commissioner (Appeals) –II Central Excise, Mumbai)

Sarvesh Bansal **.....Appellant**
Director,
Pharmax (India) Pvt. Ltd.,
9 Kurla Indl. Estate,
Netaji Palkar Road,
Ghatkopar (W),
Mumbai – 400 086.

VERSUS

Commissioner of Central Excise, Mumbai -II **.....Respondent**
9th Floor Piramal Chambers, Jijibhoy Lane,
Lalbaug Parel,
Mumbai – 400 012.

Appearance:

Shri Pankaj Pai, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85975-85976/2021

Date of Hearing : 11.03.2021
Date of Decision: 11.03.2021

PER : S.K. MOHANTY

These appeals are directed against the impugned order dated 28.12.2011 passed by the learned Commissioner of Central Excise (Appeals), Mumbai.

2. Brief facts of the case are that the appellant M/s. Pharmax (India) Pvt. Ltd., is engaged in manufacture of Pharmaceutical products falling under Chapter 30 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had manufactured 'Mutax Ing.1gm.' (Cefotaxime for Injection USP 1gm), showing M/s. Sunvet Pharma Pvt. Ltd., Himachal Pradesh as the manufacturer on the labels and M/s. Chandra Bhagat Pharma Pvt. Ltd. as the marketing company. During the course of investigation, the department observed that in respect of the goods manufactured by the appellant, there was a legal requirement to declare the retail sale price on the package under the provisions of the Drug Prices Control Order- 1995 and that the valuation of the goods was required to be done under Section 4A of the Central Excise Act, 1944. Since, the appellant did not follow the provisions of Section 4A *ibid* and did not discharge appropriate duty liability on the goods manufactured by it, the department proceeded against it and confirmed the demand of Rs.2,07,103/- along with interest and imposed equal amount of penalty. Besides an amount of Rs.10,000/- was also imposed on the other appellant Shri Sarvesh Bansal, Director of the appellant company under Rule 26 of the Central Excise Rules, 2002. The adjudication order dated 23.02.2009 confirming the said demands were appealed against by the appellants before the learned

Commissioner (Appeals). By the impugned order dated 28.12.2011, the appeals filed by the appellants were rejected and the adjudication order was upheld by the learned Commissioner (Appeals). Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

3. Learned Advocate appearing for the appellants submitted that the valuation of pharmaceutical goods was required to be considered under Section 4 ibid and not under Section 4A *ibid*, since the said goods were meant for institutional supply to M/s. Navi Mumbai Municipal Corporation (NMMC). Thus, he submitted that the adjudged demands confirmed on the appellants should be set aside.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings of the recorded in the impugned order and further submitted that since the appellant had manufactured the goods without obtaining the FDA Licence and sold the same having brand name of 'MUTAX' to the buyer, the provisions of Section 4A *ibid* have been correctly applied by the department in support of confirmation of the adjudged demands.

5. Heard both sides and perused the records.

6. It is observed from page 2 in the impugned order that the appellant had not contested the fact regarding manufacture and clearance of 'MUTAX' brand Drugs owned by M/s. Chandra Bhagat Pharma Pvt. Ltd. In this case, it is also an admitted fact on record that the disputed goods were invoiced/dispatched to M/s. Chandra Bhagat Pharma Pvt. Ltd. and not to NMMC, as claimed by the appellants. Since, the product in question is a scheduled drug as per the Drug Prices Control Order – 1995, the provisions contained in paragraph 14 therein are applicable and the manufacturer is under the statutory obligation to declare the retail sale price on the package and that the valuation of the said goods was required to be done under Section 4A *ibid*. Therefore, we are of the considered view that

there is no infirmity in the impugned order passed by the Learned Commissioner (Appeals).

7. In view of above, the appeal filed by the appellants are dismissed.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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