CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86447 OF 2015

[Arising out of Order-in-Original No: 23-25/RN/COMMNR/M-II/2014-15 dated 31st March 2015 passed by the Commissioner of Central Excise, Mumbai – II.]

Maneesh Pharmaceuticals Ltd
Plot No. 29-33 Ancillary Industrial Plots
Govandi, Mumbai – 400074 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – II
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug
Patel, Mumbai - 400012 ***…Respondent***

APPEARANCE:

Shri Mihir Mehta, Advocate for the appellant

Shri Vinod S Chettiparambil, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86086/2024

DATE OF HEARING: 01/04/2024
DATE OF DECISION: 30/09/2024

PER: C J MATHEW

The limited issue in this appeal of M/s Maneesh

Pharmaceuticals Ltd, arising from order[1] of Commissioner of Central Excise, Mumbai – II, relates to recovery of duty of ₹ 1,68,64,005/- under section 11A of Central Excise Act, 1944 for the period between June 2005 to June 2008 and April 2011 to March 2013 as well as imposition of penalty of like amount under section 11AC Central Excise Act, 1944 that concluded proceedings in one show cause notice issued for the first of the periods referred to *supra* and two notices for the period thereafter.

2. The appellant is a manufacturer of 'P&P medicaments' and the dispute pertains to clearance of 'physician samples' which are either effected under job-work procedure or by transfer to unrelated persons. The appellant had ben discharging duty liability on the clearance effected to unrelated person on the basis of transaction value while, for clearances in accordance with job-work procedure, the assessable value had been determined on the basis of 'cost of production' as set out in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The proceedings which were initiated against them proposed that the value should have been determined in accordance with section 4A of Central Excise Act, 1944 in proportion to the 'maximum retail price (MRP)' at which the goods were sold for domestic consumption.

[1] [order-in-original no. 23-25/RN/COMMNR/M-II/2014-15 dated 31st March 2015]

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. According to Learned Counsel for the appellant, the issue stands settled in their own case as determined by the Tribunal in relation to the clearance effected by them for the period from March 2007 to June 2009. We find that, in *Maneesh Pharmaceuticals Ltd v. Commissioner of Central Excise & Service Tax (LTU) [2019 (11) TMI 174-CESTAT MUMBAI]*, the Tribunal has held

> *'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.*
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> *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.*
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> *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.'*

5. The Tribunal in doing so, had drawn upon the wisdom of

Hon'ble Supreme Court in *Commissioner of Central Excise & Customs, Surat v. Sun Pharmaceuticals Industries Ltd [2015 (326) ELT 3 (SC)]* in which it has been held that the Tribunal had been correct in determining the value in terms of section 4 of Central Excise Act, 1944. Furthermore, reliance was placed on the decision of the Tribunal in *Medispray Laboratories Pvt Ltd v. Commissioner of Central Excise, Goa [2017 (5) GSTL 300 (Tri.-Mumbai)]* holding that physician samples supplied on job-work basis would have to be on 'cost construction' as seen in

> *'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.*
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> *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.'*

6. It would appear that in determining the duty liability in terms of the impugned order of the Commissioner of Central Excise, Mumbai – II these decisions were not available as reference. In order to examine the contention of the appellant that the facts of the case are squarely covered by the decision of the Tribunal in their own case that itself relied upon other decisions, we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the lines of law as settled.

(Order pronounced in the open court on 30/09/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*