
(2023) 08 CESTAT CK 0050

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal Nos.41245, 42573 Of 2013

M/S. Fourrts (India) Laboratories P. Ltd

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Central Excise Valuation Rules, 2000 — Rule 4, 6(b)(ii)
Central Excise Act, 1944 — Section 4, 4A, 4 (1)(a), 4 (1)(b)

Citation : (2023) 08 CESTAT CK 0050

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Manne Veera Niveditha, N. Satyanarayanan

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that, on perusal of records of the appellant, it was found that they had cleared products (P and P medicaments) both for sales (affixing MRP) as well as for free distribution to physicians as samples (for which no MRP was affixed). During the period from March 2009 to June 2010 for the regular clearances they had adopted valuation under Section 4A of Central Excise Act, 1944, and for the products cleared as physician samples, the appellant adopted the transaction value as under Section 4 of Central Excise Act, 1944 for payment of excise duty. The department was of the view that the products cleared as physician samples also should be assessed under section 4A of Central Excise Act, 1944. Show Cause Notice was issued proposing to demand the differential duty along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. The Learned Counsel Ms. Manne Veera Niveditha, Advocate appeared and

argued for the appellant. It is submitted that the issue is no longer res-integra and is settled by the decision of Hon'ble Apex Court in the case of Commissioner Central Excise and Customs, Surat Vs. Sun Pharmaceuticals Limited [2015 (326) ELT 3 (S.C.)]. The same view was taken in the case of Commissioner Central Excise, Thane Vs. Meghdoot Chemicals Limited [2022 (380) ELT 531 (S.C)]. It is further submitted that Section 4 and 4A are independent sections and governed by specific legal principles. Section 4 is governed by Valuation Rules 2000, which have no nexus or application for valuation under section 4A. Rule 4 of the Central Excise Valuation Rules 2000, that is relied in the Show Cause Notice for the purpose of computing the pro-rata basis value as per Section 4A which is highly erroneous. The said rule cannot be adopted for valuation under Section 4A. The very basis of the demand is incorrect.

3. The Learned AR Shri Sathyanarayanan, Assistant Commissioner (AR) supported the findings in the impugned order.

4. Heard both sides.

5. The issue to be decided is whether the physician samples (P & P medicaments) are to be assessed under Section 4 (1) (a) or 4 (1) (b) of Central Excise Act, 1944. The discussion of the Hon'ble Apex Court in the case of Sun Pharmaceuticals Ltd. (supra) is as under:

"6. As already noted above, the only ground which was mentioned in the Show Cause Notice was that since the goods had not been sold, the provisions of Section 4(1)(a) of the Act could not be applied. We find that in the show cause notice, the Department has, thus, accepted that no monetary consideration or any other consideration had been received by the assessee or the distributors from a doctor or concerned to whom free distribution of sample packs had been made. Further there was no allegation in the show cause notice that the price at which the goods were sold by the assessee to the distributors was not sole consideration. In fact, the genuineness of the price at which the physician samples were sold by the assessee to the distributors was not even doubted. It is only on the ground that the goods were not actually sold by the distributors to the physicians, which was the ground on which it was contended that the case was not covered under Section 4(1)(a). The CESTAT, therefore, in our opinion, has gone beyond the Show Cause Notice and on this ground alone, the judgment of the CESTAT dated 27-2-2009, which is the subject matter of Civil Appeal No. 3263 of 2009, warrants to be set aside. Civil Appeal No. 3263 of 2009 is, accordingly, allowed.

7. We now advert to the central issue, viz., whether provisions of Section 4(1)(a) of the Act are applicable or not.

8. Section 4 reads as under :-

"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any

excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section, -

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) persons shall be deemed to be "related" if -

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other;

(c) "place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;

(cc) "time of removal", in respect of the excisable goods removed from the place

of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

9. As per the aforesaid provision, it is the transaction value which is to be determined and on which excise duty is payable.

10. As mentioned above, the assessee had put up the defence that since physician samples were not meant for sale by distributors but were to be given free of cost to the physicians, the assessee had charged lesser price. This statement of the assessee had not been doubted. The only reason in the show cause notice given was that since the physician samples were given free of cost by the distributors and no price was charged, the case was not covered by the provisions of Section 4(1)(a) of the Act. This is clearly fallacious and wrong reason. The transaction in question was between the assessee and the distributors. Between them, admittedly, price was charged by the assessee from the distributors. What ultimately distributors did with these goods is extraneous and could not be the relevant consideration to determine the valuation of excisable goods. When we find that price was charged by the assessee from the distributors, the show cause notice is clearly founded on a wrong reason. The case would squarely be covered under the provisions of Section 4(1)(a) of the Act. In view thereof, the Central Excise Rules would not apply in the instant case.

11. As a result, we are of the opinion that the decision dated 10-11-2006 rendered by the CESTAT depicts the correct position of law and rightly holds that the case would be covered by the provisions of Section 4(1)(a) of the Act and in view thereof Rule 6(b)(ii) of the Rules would not apply. Resultantly, Civil Appeal Nos. 3742-3744 of 2007 of the Revenue fail and are hereby dismissed.

12. Since the same issue arises for consideration, following the aforesaid order, all the appeals of the Revenue stand dismissed."

(emphasis supplied)

6. Similar view was taken in the case of Meghdoot Chemicals Ltd. (supra). After considering the facts, and following the above decisions, we are of the considered view that the demand cannot sustain. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.