

Central Excise: Physician sample sold to distributor, to be valued under section 4: CESTAT

The assessee manufactures medicaments and were valuing physician samples @110% of the cost of production and paying duty accordingly, during the period December 2005 to September 2006.

Relying on the CBE & C Circular No. 813/10-2005-CX dated 25/04/2005, Revenue alleged that the value of the samples intended to be distributed free as a marketing strategy or as a gift or donation should be determined in terms of Rule 4 of CE Valuation Rules, 2000.

Accordingly, a demand of Rs.4, 21, 311/- was raised and confirmed by the adjudicating authority.

In appeal, the Commissioner (Appeals) inter alia observed & held thus:

1. There are two categories of clearances of physician samples which are manufactured on job work basis on behalf of M/s. CosmePharma Ltd., Bicholim and M/s. CosmeFarma Laboratories Ltd, Ponda and 2nd is the physician samples manufactured by M/s. Cosme Remedies Ltd. on their own account and is being sold to M/s. CosmeFarma Laboratories.
2. As far as the goods being sold to CosmeFarma Laboratories Ltd., they cannot be treated as goods being distributed free. Yes, M/s. CosmeFarma Laboratories Ltd. may distribute these samples free, but a sale transaction exists between M/s. Cosme Remedies Ltd and M/s. CosmeFarma Laboratories Ltd. and in such a context the price under Section being clearly available and applicable. There is no need to come to the Valuation Rules. And insofar as these goods are concerned, I see that in the light of the fact that a sale does not exist, the demand to this extent merits dropping.
3. Physician samples cleared on job work basis to M/s. CosmeFarma Laboratories Ltd. and to M/s. CosmePharma Limited, the Valuation under Rule 4 is apt.

In fine, while holding as above, the Commissioner (A) reduced the penalty from Rs.4,21,311/- to Rs.5,000/- only.

Aggrieved by the order, both the appellant and the revenue are in appeal before the CESTAT.

The Bench, after considering the submissions made by both sides, observed -

In the instant case there are two situations -

- a. CRL manufacturing the physician samples on job work basis for CosmePharma Ltd and CosmeFarma Laboratories, who in turn distributes the physician samples or sells for distribution free of cost.
- b. CRL manufacturing for itself and selling the same to CosmeFarma Laboratories.

CRL was paying duty on these samples on the basis of the 110% of the cost of production. The demand notice seeks to demand duty at the value to be determined under rule 4 of the CER Valuation Rules.

1. The impugned order drops the demand on the category (a) listed in para 6.1 above. Revenue has filed appeal on the ground that since the trade packs are assessed under Section 4A of the CEA, 1944, the samples should also be assessed under rule 4 of the of the Central Excise Valuation Rules. It may be noted that the physician samples are not being distributed free of cost by CRL. They are being manufactured on the job work basis for the principal manufacturer and they are being sent back to the principal manufacturer. In view of above it is not open to the revenue to demand duty on the value arrived at in terms of rule 4 of the Central Excise Valuation rules. The appeal of the revenue is dismissed.

2. The impugned order confirms the demand under the category (b) specified in para 6.1 above. The facts of the case are that CRL is manufacturing Physician Samples for itself and selling the same to CosmeFarma Laboratories. The goods are not being distributed free of cost. The decision of the Supreme Court in the case of Sun Pharmaceuticals Industries Ltd. - 2016-TIOL-10-SC-CX relates to a similar situation where the appellants were manufacturing the trade packs as well as the physician samples for themselves. In that case the appellants were engaged in selling the physician samples to the distributors who were further distributing the same with free of cost. In these circumstances, the Supreme Court held that since there is a transaction value available at which the goods are sold by the assessee to the distributors, and the same has not been challenged, the same should be assessable value under Section 4(1) (a) of the Central Excise Act. The appeal of the assessee was allowed.