

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11470 of 2015- DB

(Arising out of OIA-VAD-EXCUS-002-APP-35-2015-16 dated 16/04/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Sun Pharmaceuticals Industries Limited

Near Anandkendra, Halol-vadodara Highway, Halol,
Panchmahal, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat-390023

.....Respondent

WITH

(i) Excise Appeal No. 11518 of 2015 (Unimed Technologies Limited)

(ii) Excise Appeal No. 11888 of 2014 (Unimed Technologies Ltd)

(iii) Excise Appeal No. 11889 of 2014 (Unimed Technologies Ltd)

(Arising out of OIA-VAD-EXCUS-002-APP-88-2015-16 dated 19/05/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

(Arising out of OIO-VAD-EXCUS-002-COM-070-071-13-14 dated 17/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

(Arising out of OIO-VAD-EXCUS-002-COM-070-071-13-14 dated 17/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

APPEARANCE:

Shri, A.B. Nawal, Cost Accountant for the Appellant

Shri, R. K. Agarwal, Superintendent (AR), Shri Anoop Kumar Mudvel, Superintendent (AR) & Shri Ajay Kumar Samota, Superintendent(AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12013-12016/2023

DATE OF HEARING: 16.08.2023/17.08.2023

DATE OF DECISION: 12.09.2023

RAMESH NAIR

In all the appeals same issue is involved. Hence, all the appeals are taken up for disposal together.

1. The issue involved in the present case is that whether the appellant is liable to pay excise duty on the valuation under Section 4A in respect of Physician sample of Medicaments sold to the dealer for free distribution to the Doctors on which "not for sale" is mentioned or the valuation should be done under section 4 of the Central Excise Act, 1944.

2. Shri A.B. Nawal, Learned Cost Accountant appearing on behalf of the appellant at the outset submits that the issue in the appellant's own case has been settled in their favour by the Hon'ble Supreme Court and this Tribunal in the following judgments:

- Commissioner of C. Ex. & CUS., Surat Vs. Sun Pharmaceuticals Inds. Ltd. 2015 (326) E.L.T.3 (S.C.)
- Commissioner V. Sun Pharmaceutical Inds. Ltd- 2017 (350) E.L.T. A61 (S.C)
- Commissioner of Central Excise, Vapi Vs. Sun Pharmaceutical Inds. Ltd. 2017 (350) E.L.T. 289 (Tri.- Mumbai)
- Sun Pharmaceutical Industries Vs. Commissioner of C.EX., Surat-II 2005 (183) E.L.T. 42 (Tri.- Mumbai)
- Commissioner of C.EX., Thane-I Vs. Meghdoot Chemicals Ltd. 2022 (380) E.L.T. 531 (S.C.)
- Final order No. 11279/2023 dated 19.06.2023

3. Shri Ajay Kumar Samot, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the record. We find that the issue in brief in the present appeal to be decided is the physician Sample which is sold to distributor for further distribution free of cost to the physicians and doctors, whether the value of

such goods should be governed by Section 4A or Section 4. We find that the appellant have manufactured and cleared the goods i.e. Physician sample mentioning clearly on the pack that it is not for sale. Since the goods is not for sale and no MRP is affixed on the product, the goods cannot be valued under Section 4A as the same is not for retail sale. Accordingly, the correct provision for valuation of physician sample is section 4, where the Excise duty is payable on the transaction value. This issue is no longer res-integra as the same has been finally decided by the Hon'ble Supreme Court in the case of *Sun Pharmaceuticals industries Ltd. reported in 2015 (326) ELT 3 (SC)* the relevant order of the Hon'ble Apex Court has held that Excise duty is payable in terms of section 4(i)(a) not under section 4A but on pro rata value of good cleared under section 4A i.e. on the transaction value between the assessee and distributor to whom, the physician samples were sold. The relevant order is reproduced below:

"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.*

C.A. No. 6984/2009; C.A. No. 9876-9878/2011; C.A. No. 1990-1992/2012; C.A. No. 3338/2012; C.A. No. 268-269/2015; C.A. No. 6571-6575/2015; C.A. No. 3387-3389/2005; C.A. No. 2431-2432/2008

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

In view of the above Hon'ble Supreme Court judgment in the appellant's own case issue is finally settled in favour of the appellant. Considering the same, the impugned orders are not sustainable.

5. Hence, the same are set aside. Appeals are allowed.

(Pronounced in the open court on 12.09.2023)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C L MAHAR)
MEMBER (TECHNICAL)**