

2012 (1) ECS (75 ) (Tri-Che)

**IN THE CUSTOMS, EXICISE AND SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL, BENCH AT CHENNAI**

**Allianz Bio Sciences Pvt. Ltd. & Others**

**Versus**

**Commissioner Central Excise, Puducherry**

**Appeal Nos. E/S/155,156/2011 & E/262 & 263/2011**

**E/S/159-162/2011 & E/266-269/2011**

**E/S/163-175/2011 & E/271-283/2011**

[Arising out of Order-in-Appeal No. 5 to 23/2010 (p) dt.11.2.2011 passed by the  
Commissioner of Central Excise (Appeals), Chennai]

Allianz Bio Sciences Pvt. Ltd. & Others

Appellant/s

Versus

Commissioner Central Excise,  
Puducherry

Respondent/s

Appearance:

None (Sl.No.1)

Shri N. Viswanathan.Advocat (Sl.No.2,3)

Shri G. Natarajan , Advocate(Sl.No.4-11)

For the Appellant/s

Shri P. Arul, DR

For Respondent/s

CORAM :

**Hon`ble Ms. ArchanaWadhwa, judicial Member**

**Hon`ble Dr. ChittaranjanSatapathy, Technical Member**

Date of hearing : 01.05.2012

Date of decision : 01.05.2012

Stay order No. 250 to 268 /2012

Final Order No. 420 to 438 Date: 01.05.2012

**Per ArchanaWadhwa**

1. All the stay petitions and appeals are being disposed of by a common order as the issue involved is identical.
2. After hearing both sides, duty represented by Shri N. Viswanathan, and Shri G. Natarajan, Advocates for the appellant and Shri P. Arul, for the Revenue, we find that the appellants are engaged in the manufacture of medicaments, which are specified items under Section 4A of the Central Excise Act, 1944 requiring payment of duty on the basis of M.R.P printed on them. Apart from the regular medicaments, the appellants are also manufacturing physician samples. In some of the cases, such physician samples are being manufactured by the appellants on their own count and cleared for free distribution. In some cases, the samples are being manufactured by appellants on behalf of other medicament manufacturing units, on job work basis. Such sample manufactured on job work basis are being cleared on payment of duty at the contracted price between the job worker and the principal manufacturer. The dispute in the present appeals relate to valuation on such physician samples.
3. As we find there are two types of physician samples, one manufactured under contract on job work basis and the other manufactured and cleared as free samples, both the issues are required to be addressed separately.
4. As regards the physician samples manufactured on job work basis, on behalf of the brand name owners, we find that such samples are being cleared by the appellants on payment of Central Excise duty in terms of the provisions of section 4 of the Central Excise Act. The appellants' contention is that they are not clearing the physician sample for free distribution but the same are sold to the other companies at an agreed price as per purchase order placed upon them. Such price mentioned in the purchase order is the sole consideration for sale and the transactions are on principal to principal basis. As such, the assessable value of the physician samples is to be arrived at on the basis of such transaction values.
5. We find that there are various decisions of the tribunal accepting the above stand of the appellants. In the case *Themis Laboratories Pvt. Ltd. and Meghdoot Chemicals Ltd. Vs CCE Mumbai- 2011- tiol- 1189- CESTAT-MUM*, the Tribunal

held, by following the decision in the case of Mayer Health Care Pvt. Ltd Vs CCE Bangalore-2008-tiol-2494-CESTAT-Bang that where physician samples are not distributed free of cost by the manufacturer, but are cleared on receipt of consideration, the excise duty is required to be paid on the transaction value. To the same effect is another decision of the Tribunal in the case of OmniProtech drugs Pvt. Ltd. Vs CCE Pune- 2011 (274) ELT 377 (Tri-Mumbai) laying down that transaction value is to be taken as the assessable value when physician samples cleared to the brand owner on transaction values. Another decision of the Tribunal in the case of softesule Pvt. Ltd. Vs CCE Mumbai – 2011-TIOL-1439-CESTAT-MUM is to the effect that when physician samples manufactured and cleared to brand owners/ buyers on principal to principal basis for a consideration which and further distributed by the buyer free cost to physicians/doctors, the same is required to be assessed to duty on the transaction values. The Tribunal's decision in the case of CC Vs Sidmak Laboratories (India) Ltd. – 2009 (242) ELT 255 (Tri-Ahmd.) also affirms the above view Revenue's appeal against the said order of the Tribunal was dismissed by the Hon'ble Supreme court as reported in 2011 (270) ELT A90 (SC)

Inasmuch as the issue is no longer res integra and stands decided by various decisions of the tribunal, we hold that wherever the appellants manufactured physician samples under a contract with the brand owner and have cleared the same by adopting the said transaction value, no further demand of duty is required to be confirmed against them.

6. As regards the physician samples manufactured by some of the appellants on their own behalf and distributed free of cost, we find that the issue is no more open for arguments inasmuch as the Larger Bench of the Tribunal in the case of cadila pharmaceutical Ltd. Vs CCE Ahmedabad – 2008 (232) ELT 245 has held that valuation of such physician samples is required to be made on the basis of pro rata value of the regular pack of the comparable goods in terms of the provisions of Rule 4, Ld. Advocate appearing for the appellants has sought to argue that the Larger Bench decision of Tribunal stands impliedly overruled by a subsequent decision of the Hon'ble Supreme Court in the case of CCE Bangalore Vs Balpharma Ltd. -2010 (259) ELT 10(sc.), when the Hon'ble apex court refused to entertain the appeal filed by the Revenue.
7. We do not agree with the Id. Advocate on the above point. On going through the Hon'ble Supreme Court's decision in the case of BalPharma (supra), we find that the Hon'ble apex court did not consider the merits of the case but rejected the Revenue's appeal by observing that the Tribunal's decision has relied upon the earlier decision in the case of *Trinity pharmaceuticals Pvt. Ltd.* which decision was not appealed against by the Revenue. It was in this view of the matter that the Hon'ble Supreme Court declined to entertain the appeal. As Such, it cannot be said that the law declared by Large Bench in the case of CadilaPharmaceuticals (supra) stands overruled by the Hon'ble Supreme Court. Accordingly, by following the Larger Bench decision in the case of *cadila Pharmaceuticals*, we uphold the demands of duties where physician samples are manufactured for further free distribution.

8. Having declared the law, the lower authorities would apply the same by taking into consideration the relevant facts and would quantify the demands of duties wherever the appellants have manufactured the physician samples for free distribution.
9. All the stay petitions as well as the appeals get disposed of in the above manner.

(Operative part of order was pronounced in open court on 1.5.12)