

CIRCULAR NO

915/05/2010-CX.

Dated: February 19, 2010

Subject: - Clarification regarding valuation of free samples of the products covered under MRP based assessment - reg.

Attention of field formations is invited to Board's circular No. 813/10/2005-CX dated 25.4.2005 issued from F.No. 6/39/2000- CX1 wherein it was clarified that in the case of free samples, the value should be determined under Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. A larger bench of CESTAT in the case of Blue Cross Laboratories Vs CCE, Mumbai 2006 -TMI - 596 - Appellate Tribunal, Mumbai, has also held that physician samples are to be assessed under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Further, the aforesaid circular of 2005 has also been upheld by the Hon'ble High Court of Mumbai in the case of Indian Drugs Manufacturer's Association Vs. UOI, reported at 2008 -TMI - 2937 - HIGH COURT, BOMBAY .

3. Subsequently, CESTAT in its majority decision in the case of M/s Cadila Pharmaceuticals Ltd. Vs Commissioner of Central Excise Ahmedabad II, reported at 2009 -TMI - 31953 - CESTAT AHMEDABAD, has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products , is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act, ibid. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

4. The aforesaid decision of CESTAT would, mutatis mutandis, be applicable in respect of free samples of other products which are under MRP assessment. Accordingly, it is clarified that valuation of Samples which are distributed free as part of marketing strategy, or as gifts or donations, shall be determined, in terms of Board's circular No. 813/10/2005-CX dated 25.4.2005 and the aforesaid decisions of CESTAT, as explained in foregoing paras 2 & 3, whether the final products are assessed under MRP based assessment or otherwise.

5. Trade and Industry may be informed.

6. Receipt of this circular may be acknowledged.

7. Hindi version would follow.

F No. 6/5/2009-DS (CX-I & 4)

(MADAN MOHAN)

Under Secretary (CX. 1)