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Collector of Central Excise Vs. GlIndia Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-13-1996

Reported in : (1996)(88)ELT692Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : GlIndia Ltd.

Judgement :

1. Invoking the provisions of Section 35G of the Central Excises and Salt Act, 1944, the Revenue has sought reference to the High Court on the issues as per the questions formulated by them, pleading them to have arisen out of the Order Nos. 1615-16/96-WZB, dated 20-5-1996 of this Bench in Appeal Nos. E/140/92 & E/180/92 filed by the Collector of Central Excise, Aurangabad.

2. The issue involved was of denial of Modvat credit on that quantity of glass bottles which break down during the process of bottling of P.P. Medicines and go as waste. It was alleged that such broken glass bottles could not be considered as - manufacturing waste, eligible for credit vide Rule 57D of the Rules. Both the authorities below rejected the contention of the department and dropped the demand. In the appeal before the Tribunal, this Bench also confirmed the said finding. The Tribunal also referred to another decision of the Tribunal in Collector v. Eros Pharma - 1994 (73) E.L.T. 72 (Tribunal).

3. The Revenue seeks reference to the High Court on the question as formulated as under: "Whether the scrap of broken glass bottles during the process of filling of

medicines can be treated as manufacturing waste and as such Rule 57D of the Central Excise Rules, 1944 is applicable. The waste arises during the packing of medicines and as such actual bottles used for packing medicines form the part of output for final product only. The credit availed on the bottles which are not used in packing medicines and break during the filling of medicines needs to be reverse." (The question as formulated would, if decided to be referred would have required material alteration in its phraseology to convey the correct meaning).

4. Mr. Krishnamurthy, the ld. DR has submitted that the waste and scrap of glass is recognised as distinct - excisable item and further the bottles are used only for due filling of the medicines and cannot be taken as forming part of manufacturing process so as to attract provision of Rule 57D of the Rules. The ld. DR has further pleaded that the department is not objecting the availment of credit in relation to duty paid on the bottles which go as packing material, but the bottles which break down stand on separate footing.

5. Mr. S.S. Nagar, the ld. Advocate has pleaded that the manufacturing process in P & P Medicines extend upto filling of the medicine in the bottles and hence, Rule 57D has been correctly followed and no question of law requiring determination by the High Court arises.

6. The basic issue is to what extent, the manufacturing activity for the P & P Medicines could be taken to have extended.

7. Production of medicaments is also regulated by a specific statute and there is a prohibition or to put it other way, there is a statutory requirement to pack the medicaments in a container of the type required therefore, and when packing of medicament is a statutory compulsion, the manufacturing activity is deemed to have been extended till the medicines are packed and when the manufacturing activity comes to an end only after the medicines are packed, the waste generated during the said process would stand covered under Rule 57D and with that being the position, the issue raised for reference to the High Court does not arise. This is also the view held by South Regional Bench in Re : Eros Pharma (supra). There is no contrary view taken by any authority and no convincing grounds are raised to probablise the alternative view.

8. There, thus, does not appear any justifiable ground to make a reference on the issue framed and hence, the application is rejected.

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