

Cce Vs. Softsule Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-15-1998

Reported in : (1998)(75)LC310Tri(Mum.)bai

Judge : U Bhat, S T G.R.

Appellant : Cce

Respondent : Softsule Pvt. Ltd.

Judgement :

1. Respondent, engaged in the manufacture of Patent and Proprietary Medicines and enjoying benefit of Notification No. 245/83 in respect of some of the preparations, filed price list No. 13/89 in respect of a particular preparation "KARVOL" claiming deduction of discount of 30% from the maximum retail price. Notification No. 245/83 granted exemption of Central Excise duty in excess of the amount of duty calculated on the basis of the value of the medicines arrived at after allowing a discount of 15% on the retail price of the medicines specified in the price list referred to in paragraph 19 of the Drugs (Prices Control) Order, 1979.

2. The third proviso to the Notification stated that the exemption shall be allowed only if the manufacturer claims exemption under this Notification in respect of all the medicines cleared by him, the retail price of which is specified in the said price list. Evidently, the appellant did not claim benefit of exemption under Notification No.245/83 in regard to "Karvol", but made the claim in regard to certain other preparations and, therefore, did not satisfy the condition in proviso (iii) to the

Notification. It was in this light that the Assistant Collector directed the appellant to pay duty calculated on the published retail price less 15%, instead of price less 30%. This order having been set aside by the Collector (Appeals), the Department has filed this appeal.

3. The Tribunal has considered a similar question in Mepro Chemicals, and has held that the manufacturer cannot be compelled by law to avail benefit of the exemption Notification and if any of the conditions is not followed, it was for the proper officer to deny the benefit of Notification in respect of medicines for which benefit has been claimed. What the Department desires is to compel the respondent to avail the benefit of Notification No. 245/83 in regard to "Karvol". That cannot be done.

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