Collector of C. Ex. Vs. Pharma Packaging

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-1998

Reported in : (1999)(107)ELT219TriDel

Appellant : Collector of C. Ex.

Respondent : Pharma Packaging

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the eligibility of the benefit under exemption Notification No. 245/83, dated 13-9-1983 (as amended) in respect of the patent or preparatory medicaments - product called 'Vermisol'. The respondents M/s. Pharma Packaging were engaged in the manufacture of P or P medicaments on their own behalf as well as on behalf of other loan licensee, in this case M/s. Khandelwal. They had filed price list in respect of the products cleared on their own behalf and in respect of the product Vermisol, claimed the benefit of Notification No. 245/83-C.E., dated 13-9-1983. The benefit was proposed to be denied on the ground that they had not availed of the benefit under this notification uniformly in respect of the products manufactured by them. The Collector of Central Excise (Appeals), Bombay, observed that M/s. Khandelwal Laboratories were the actual manufacturer of the product in question and that they had claimed 15% discount as required under Notification No. 245/83-C.E., dated 13-9-1983. The Assistant Collector had already extended the benefit to the respondents which was confirmed by the Collector of Central Excise (Appeals).

3. We have heard Shri. H.K. Jain, SDR and have gone through the facts on record.

4. We have carefully considered the matter. Under Notification No.245/83-C.E. issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, exemption was granted in respect of the duty of excise which was in excess of the one calculated after deducting 15% discount from the market retail prices - retail prices as per the provisions of the Drugs (Price Control) Order, 1979 issued under Section 3 of the Essential Commodities Act. The respondents for the purposes of arriving at their assessable value had sought deduction of 15% from the market retail prices. The product in question was manufactured on behalf of M/s. Khandelwal Laboratories who had uniformly availed of the benefit of the above notification. Thus, we consider that the condition as stipulated in the notification has been met as had been held both by the adjudicating authority as well as by the appellate authority.

5. The Revenue had pleaded in appeal that the price lists which the respondents were filing on behalf of M/s. Khandelwal Laboratories were not relevant for the purposes of Notification No. 245/83-C.E. It is also seen that under the proviso to the said notification, the exemption was allowable if the manufacturer claimed exemption under that notification in respect of the medicines cleared by him, the retail price of which was specified in the said price list under Drugs (Price Control) Order, 1979. The product in question had been cleared by the respondents and they had paid Central Excise duty thereon.

Further, it is provided in the notification that the availment of the benefit was in terms of the proviso for those medicines whose retail price is the one specified in the said Drugs (Price Control) Order. We consider that even otherwise the duty could not be demanded on the retail prices and either the assessments have to be made in terms of Section 4 of the Central Excise Act, 1944 or benefit of the notification had to be extended. In either case, the assessee was eligible for the benefit of the said notification as rightly held by both the adjudicating authority and the appellate authority.

6. In the facts and circumstances of the case, we do not find any ground to interfere with the view already taken in the matter. As a result, there is no merit in this appeal and the same is rejected.