

**Abner Pharmaceutical Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-25-1998

**Reported in :** (1998)(101)ELT93TriDel

**Appellant :** Abner Pharmaceutical

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. This is an application for wavier of pre-deposit and stay of recovery of Rs. 4,06,149/- confirmed as differential duty on the ground that the appellants herein were not entitled to the benefit of Notification No. 64/79-Cus. and No 142/80-Cus. since they had failed to produce the consumption certificate evidencing consumption of the imported goods i.e. Alfa-Phenyle Glycine Chloride Hydrochloride (inputs) from Holland to be used in the manufacture of Ampicillin/Amoxycillin Trihydrate.

2. The learned Counsel, Shri J.S. Agarwal submits that even though the certificate as required in terms of the Notification was not produced before the adjudicating authority or the lower appellate authority, he has since been able to produce the same and since the certificate shows that the quantity of the inputs has been consumed by the appellants in the manufacture of their final product, the benefit ought to be extended and the requirement of duty demand should be waived and its recovery stayed during the pendency of the appeal.

3. The learned DR Shri Jain submits that the appellants have not offered any explanation as to why the certificate was not produced either within the stipulated period of three months as provided in the Notification nor there is anything to show that the appellants had applied for extension of time to produce the certificate and therefore, no prima facie case for waiver of predeposit has been made out by the appellants and they should be directed to deposit the entire duty amount.

4. We have carefully considered the above submissions and perused the notification in question. The Notification requires that an account of the imported goods received and consumed in the place of manufacture for the purpose of manufacture of penicillin drugs intermediate shall be maintained in the manner specified by the Assistant Commissioner of Customs and the notification also provides that the manufacturer/importer shall produce the extract of such account duly certified by the manufacturer evidencing receipt of the goods in the premises of the place of manufacture within a period of three months or such extended period as the Assistant Collector of Customs may allow.

There is nothing on record to show that any account evidencing receipt and consumption of imported goods was maintained in the manner prescribed in Public Notice No. 146, dated 29-9-1996 which has been under-taken to be maintained as seen from the bond executed by the appellants. Therefore, the matter at best is an arguable one and the appellants cannot be said to have made out a prima facie case for waiver on merits. Looking to the totality of the facts and circumstances of the case, we direct the appellants to deposit a sum of Rs. 2 lakhs towards duty within a period of eight weeks from the date of receipt of this order and on such deposit being made, the requirement of pre-deposit of balance duty is dispensed with and its recovery stayed pending the appeal. Failure to comply with this direction shall result in automatic vacation of the stay granted and appeal liable for dismissal without prior notice.

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