

Usv Ltd. and anr. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-1998

Reported in : (1998)(79)LC67Tri(Mum.)bai

Judge : K Venkataramani, Vice-, J S Murthy

Appellant : Usv Ltd. and anr.

Respondent : Cce

Judgement :

1. The application is for waiver of pre-deposit of duty amount of Rs. 45,79,143 and an equal amount as penalty under Section 11AC of CEA. The other application is by the Managing Director of the applicant firm for waiver of penalty of Rs. 20,000/- imposed under Rule 209A of the Central Excise Rules.

2. Shri M.H. Patil, the Id. counsel contended that the applicants are manufacturing medicaments Vitamin A Injections and they were manufacturing the same till 16.2.1994. Thereafter they started clearing the same as generic medicaments from February, 1994. The department initiated proceedings against them and has demanded the duty on the ground that these goods cannot be considered as generic medicaments but to continue to duty as P or P medicaments under sub-heading (sic) 300.10 of the CETA. Show cause notice has been issued by invoking the longer period under Section 11A for the period from 16.2.1994 to 30.6.1996 and the notice is dated 6.11.1996. The demand is hit by limitation since the applicants had submitted their classification list along with the labels of medicines.

In such a situation, the Id.

counsel cited judgment of the Supreme Court to say that longer period cannot be invoked under Section 11A.3. The Id. DR Ms. Lakhani contended that a perusal of the show cause notice clearly brings out the suppression of material fact by the applicants in their classification list and this fact is also admitted in the statement of the Vice-President. The applicants having claimed the goods as National Formulary of India (NFI) has omitted to indicate it by adding the letters NFI in the label of their product. Therefore, there was justification for the Commissioner to invoke the longer period.

4. We have considered the submissions carefully. We find that the question is line of classification of the goods under Chapter 30 of the CETA which is arguable. On limitation also we find that there was a statement of the Vice-President of the applicants which was indicative of the fact that they were not unaware of the statutory requirement of indicating NFI in their label. Therefore, no prima facie case is made out. However, we are inclined to agree with the Id. counsel that the penalty of the equal amount under Section 11AC in this case is not correct in law prima facie because at the material time this provision was not in the statute. The Id. counsel has also informed that even during the adjudication proceedings, they had deposited Rs. 9 lakhs.

Taking into account all these aspects, we direct that for the purpose of hearing the appeal on merits, the applicants should deposit a sum of Rs. 10 lakhs (Rupees ten lakhs) on or before 31.7.1998, subject to which pre-deposit of the penalty on the applicant firm and also on the Vice-President as well as the balance amount of duty is dispensed with and recovery is stayed.

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