

Commissioner of Central Excise Vs. Wockhardt Ltd.

Commissioner of Central Excise Vs. Wockhardt Ltd.

SooperKanoon Citation : sooperkanoon.com/13729

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-1998

Reported in : (1998)(61)ECC517

Appellant : Commissioner of Central Excise

Respondent : Wockhardt Ltd.

Judgement :

1. Short question involved in this appeal is whether the product Albendazole Suspension falls under Chapter sub-heading 3003.10 as Patent or Proprietary medicine - as contended by the Revenue - or under Tariff sub-heading 3003.20 as other than P or P medicines as contended by the respondents.

Revenue's case in the show cause notice for treating the aforesaid product as a P or P medicine was that a cattle head was printed on the label of the medicine in question which can be considered as a symbol used in relation to the medicines so as to indicate the connection in the course of trade between the medicine and the respondents herein.

2. As against the aforesaid contention, the respondents herein had contended before the lower appellate authority that cattle head was printed on the label in view of the provisions of the Drugs Act inasmuch as the medicine in question was only for use for animal consumption.

3. The lower appellate authority decided the classification in favour of the respondents holding the product as other than P or P medicine under Tariff heading 3003.20. The said authority without discussing the contentions of either side has stated that the show cause notice cannot be confirmed on the ground by referring the Collector's order since the said order of the Collector found the ground in favour of the respondent. The other ground in the show cause notice relating to 'cattle head' was not mentioned in the show cause notice issued by the Revenue, and therefore the order-in-original passed by the original authority had travelled beyond the show cause notice. In that view the lower appellate authority decided the case against the Revenue. Hence, the Revenue has come in appeal before the Tribunal.

4. Only a very short ground has been taken by the appellant Collector which is reproduced below :- "Out of the two charges mentioned in SCN one was dropped by Collector in his order-in-original but the marking of cattle head on the label was not examined at all by the adjudicating authority. If examined properly this second charge could have led the classification of goods as P or P Medicament under Tariff head 3003.10. The present OIA will have the effect of keeping the second charge of SCN unanswered while giving the benefit to the party.

The Collector (A) should have sent the case for de novo adjudication and should not have allowed the appeal." Ld. SDR has reiterated the aforesaid ground submitting that the lower appellate authority has not examined the label which bears a picture of cattle head and whether that picture makes the medicine a P or P one.

Had it been examined, the position possibly would have been different.

Ld. SDR therefore, prays for remand of the matter to the lower appellate authority.

5. We have 'carefully considered the pleas advanced from both sides. We may mention in the first instance that the lower appellate authority has gone wrong in observing that the show cause notice did not refer to the picture of cattle head. It did refer, as we have already pointed out in the facts narrated above but that by itself is not sufficient to accept the appeal of the appellant herein. A plea was taken

before the lower appellate authority by the respondents herein that the displaying of a cattle head on the label was a legal necessity under the Drugs Act because the medicine in question was meant only for animal use. The lower appellate authority has given a definite decision in favour of the respondents that the classification of the product is under Tariff Heading 3003.20. It cannot therefore be presumed that the lower appellate authority has not taken into account the aforesaid submission of the respondents while coming to its conclusion on classification under Tariff Heading 3003.20. The appellant Collector has also stated that examination of the picture of cattle head could possibly have led to a different classification i.e. as P or P medicament under Tariff Heading 3003.10 which is only a tentative ground and not a definitive ground. The appellant Collector merely wants the Tribunal to indulge in a fishing inquiry which we are not prepared to do. In view of the categorical plea of the respondents before the lower appellate authority that a cattle head is shown for the purpose of conforming to the Drugs Act, this submission ought to have had been rebutted by the Collector in the grounds of appeal in order to get the impugned order set aside. In the absence of any such rebuttal we are unable to accede to the prayer of the appellant Collector. Consequently, we do not find any substance in the appeal and we dismiss it accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com