

Addis Capsulation and Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-1998

Reported in : (1998)(104)ELT708TriDel

Appellant : Addis Capsulation and

Respondent : Collr. of C. Ex.

Judgement :

1. The appellants are aggrieved by the order of the Collector of Central Excise (Appeals), Mumbai confirming the order of the Assistant Collector who has approved classification lists filed by the assesseees for products such as "Ampicillin for oral suspension BP", "Chloramphenicol for oral suspension BP", etc. under CET sub-heading 3003.20 attracting nil rate of duty, denying modvat facility and directing the assesseees to reverse the Modvat credit availed on such goods. The appellants claim that their goods bear a brand name and hence fall for classification under CET sub-heading 3003.10.
2. None appears for the appellant inspite of notice of hearing; we, therefore, proceeded to hear the learned SDR and perused the records.
3. The labels on the products whose classification is in dispute consist of a right angle triangle in a colour different from the rest of the lables. There is no distinguishing mark, symbol, etc., which can be said to establish a connection in the course of trade between the medicines and the appellant's claim that the right angle triangle itself is to be treated as their brand name so as to hold that their

products are P or P medicines is not acceptable, since this triangle does not indicate any relationship between the appellants and the goods in question. The appellants' submission that there is no difference in the labels of the products covered by the present impugned order and those considered by the Collector (Appeals) in his order dated 25-6-1991 wherein he has held that the goods were branded goods and hence they were P or P medicines is not correct because in the labels of the above products which were the subject matter of the earlier order of the Collector (Appeals), the word "Addis" was clearly superimposed in capital letters in the special design in triangular form. It is for this reason that the Collector (Appeals) in his order dated 25-6-1991 held that the design of triangle and the manner of writing "Addis" gives a definite look to the label so as to indicate and establish a definite connection in the course of trade between medicine and the manufacturer having the right either as proprietor or otherwise to use the name or mark. Since the labels in this case cannot be said to contain any brand name as rightly held by the Collector (Appeals), we see no reason to interfere with the impugned order and accordingly uphold the same and reject this appeal.

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