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Synbiotics Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-1998

Reported in : (1999)(112)ELT97Tri(Mum.)bai

Appellant : Synbiotics Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The above is an applications were filed for waiver of deposit of duty of Rs. 4.58 crores and penalty Rs. 1 crore. In the beginning when the matter was taken up for hearing it was found that by the impugned order the adjudicating authority i.e. the Collector had confirmed 51 show cause notices. When we asked Shri V. Sridharan about filing of as many appeals as there are show cause notices, he told that appeals are being filed on the date of hearing, i.e. on 3rd June, 1998. Accordingly we had taken up on the understanding the appeals would be filed. We are told that appeals have since been filed and hence we take up all the matters. At the time of hearing we stated that while appeals may be filed separately we dispense with filing of individual appeals as we have shortage of space.

2. Appellant is engaged in the production of bulk drugs streptomycin and tetracycline falling under Chapter 29 of the Schedule to the Central Excise Tariff Act. They follow certain procedure, viz.

fermentor, reactor containing water, added certain ingredients such as soyabean flour, carbohydrates etc. It is then sterilised to remove micro-organisms that may

be existing therein. For production of antibiotic a specific type of micro-organism is required to bring about fermentation of the medium. In the sterilised medium developed culture is added with constant agitation. The enzym contained in the said culture converts various ingredients into broth and mixture is maintained by specific temperature over a specific period and when the process of fermentation is complete the required antibiotic is generated. The question involved is whether the broth which is used for generation of particular antibiotic through the activity carried out by the culture on the food ingredients of various sterilised medium is liable for excise duty or not as the life of broth is very short and unstable. A broth was treated as prepared culture media by the department for development for micro-organisms. It is the case of the assessee that the said process is not manufactured; the medium as short process culture medium has short self-life not good as they are not marketable hence duty is not leviable. When the officers visited they took statement of commercial assistant who stated that manufacture of food media they used raw materials like tapioca, flour, casein, yeast, cotton seed flour etc. These materials were sterilised, cooled it at a required temperature so these treated as production on the basis of the statement. It is the contention of the learned Counsel that on the basis of the affidavits of the experts filed in the case the authority below has erred in law in coming to the conclusion that there has been a manufacture of broth by the applicant. He also stated vehemently that factually the item in question was not at all prepared culture media.

It should be treated as only food media. It is wrongly classified by the revenue. He also read the evidence of Shri R.C. Shah and Shri V.D.Modi. He invited our attention to HSN Explanatory notes under 38.21 to say that the approach of the department is wrong. He also invited our attention to the observations of Kirk - Othmer Encyclopedia Chemical Technology 3rd edition 101. He also stated that the item in question is not at all marketable and he relied on the judgment of the Supreme Court in Union of India v. Delhi Cloth & General Mills Co. Ltd. -1997 (92) E.L.T. 315. He emphasized that sterilisation mentioned in HSN Notes is not done by the appellants in this case therefore it is not marketable. He also relied on the judgment in C.C.E., Surat v. Citurgia Bio-Chemicals Ltd. 3. As against this the learned DR argues that the entire process made by the appellants has been described by the commercial assistant. The appellants have wrongly termed it as

prepared culture media as food media. If they have procured the media from open market they doubt the purity of the culture that means he relied on mainly the observations made by the assessing authority. He also stated that as far as the decision reported in 1996 (87) E.L.T. 267 is concerned the facts are entirely different. He relies on the observations of the Tribunal in paragraph 13 on the said argument. As far as DA for proceeding mentioned by the learned Counsel during the argument is concerned, there is no declaration made by the BIFR in terms of Section 16 of the relevant Act.

4. We have considered the rival submissions. The fact whether particular product is marketable or not has to be looked in depth and it is difficult to come to any conclusion at prima facie stage. We cannot come to any conclusion about the prima facie case. The balance sheet as on 1996-97 is concerned it shows a lot of loss, viz. Rs. 111/- crores. To safeguard the revenue we direct that the appellants may take Rs. 1.50 crores within two months from the date of receipt of this order. On such payment being made, there will be waiver of payment of remaining sum of the amounts and stay the recovery.

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