Collector of C. Ex. Vs. Griffons Laboratories P. Ltd.

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SooperKanoon Citation : sooperkanoon.com/14809

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-08-1998

Reported in : (1999)(110)ELT958TriDel

Appellant : Collector of C. Ex.

Respondent : Griffons Laboratories P. Ltd.

Judgement :

1. The issue involved in the appeal filed by the Revenue is whether the benefit of Notification No. 48/77 dated 1-4-1977 is available to the P or P medicine manufactured by the respondents for their loan licencee.

2. Shri H.K. Jain, ld. SDR, submitted that the explanation (a) to notification provided that if the manufacturer is a company, no foreign company should hold the share therein and is one foreign company was holding the share of the respondent company, the benefit of notification is not available to them. He also submitted that it is now well settled law that the person who actually manufactures the excisable goods is considered as manufacturer for the purpose of excise rules. Ld. SDR also contended that the decision of Gujarat High Court relied upon by both the lower authorities as reported in 1980 (6) E.L.T. 759 (Guj.), has not been accepted by the Government as an appeal has been filed in the Supreme Court. Further in respect of Explanation (a) held to be ultra vires by the Gujarat High Court, the notification without any amendment remained on the statue and as long as the condition is appearing in the notification, no concession can be given by the respondents.

3. Shri T. Vishwanathan, ld. Advocate appearing on behalf of the respondents, submitted that once the Gujarat High Court has held explanation (a) to be ultra vires of Constitution in Suhrid Geigy Ltd. v. Union of India, the condition of the notification cannot be made applicable at all. Regarding the issue of a question of manufacturer, he submitted that Gujarat High Court in the case of Indica Laboratories v. CCE reported in 1990 (50) E.L.T. 210 has held that if a loan licencee is manufacturing the excisable goods in the factory of others using their labour, will be treated as manufacturer.

4. We have considered the submissions of both the sides. The Gujarat High Court has in the case of Suhrid Geigy Ltd. (supra) held that the Notification 48/77 only exempts clinical samples of P or P medicines subject to certain conditions. The primary objective of the notification is to render service to the patients by enabling the manufacturer to make his medicine known to the medical world and thereby service the patients and the ailing humanity. While its secondary object was only to encourage the trade and business.

Therefore it cannot be said such an object will be better served by dividing the manufacturer of medicine between wholly indigenous company and the companies having foreign element in them. The Gujarat High Court therefore observed that the Clause (a) of the explanation does not have any rational nexus with the objective which the notification seeks to serve and held Clause (a) to be ultra vires of the Article 14 of the Constitution. As the condition on the basis of which benefit of notification is sought to be denied, has been held to be ultra vires by Gujarat High Court and no evidence has been brought on record to show that the judgment has been reversed by the Apex Court or stayed by the Apex Court. We follow the same and reject the appeal filed by the Revenue. As the appeal is rejected on this account, we have not considered the question as to who is the manufacturer in this case.