Abbott Laboratories (India) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-11-1999

Reported in : (1999)(84)LC717Tri(Mum.)bai

Judge : J S Murthy

Appellant : Abbott Laboratories (India) Ltd.

Respondent : Cce

Judgement :

1. This is the party's appeal against the above captioned impugned order dated 27.9.1993 F. No. V-2(Ch. 30)/48/93/7605 of the Respondent, praying for setting aside the orders of the lower authorities and for direction to Assistant Commissioner to grant refund of Rs. 36,270 (basic) + Rs. 1813.50 (special) duty amount.

1.1. The facts of the case are, that the appellant is a public limited company, manufacturing P.P. medicine assessable under Chapter 30. It cleared the consignment of 25000 units of Erythromycine Ethyl Succinate 100 ml. for export purpose under G.P. No. 145, on payment of duty as mentioned above. The export order was cancelled subsequently. After obtaining permission of Assistant Collector under Section 173M of Central Excise Rules, it was brought back to factory and also gave intimation under D3-No. 01/9-8-91 for 3800 units and D3 No.-2/10.8.1991 for 19600 units. Subsequently consignment was repacked in pack size of 45 mis. (51600 units) and cleared on payment of duty under 8 GP's

No.335, 322, 317, 309, 292, 288 with batch No. (and quantity) of 29-327 YA (8400) (6000), 29-328 YA (4700), (4400) (9700), 29-329 YA (18400), 29-326. The appellants applied for refund claim for the earlier duty amount shown as above, on the ground repacked finished goods were cleared under various gate passes, as described above, within 6 months, from the date of return of goods to their factory. In the personal hearing held on 19.12.1991, labels of the consignment was produced and submitted arguments. The Assistant Collector Division II, Bombay III rejected the claim on 13.10.1992. The appeal of the appellant was also rejected by the Collector of Central Excise (Appeals) under the impugned order, holding that there is nothing to indicate that the goods which were cleared subsequently were the one which were cleared first on payment of duty, and in the absence of accounts, correlation cannot be established and more correlation of Batch No. is not sufficient, and object of Rule 173M for maintenance of specific accounts regarding reprocessing and separate stores is evidently to ensure that appropriate track is kept over such goods so that refund cannot be wrongly claimed. Hence this appeal.

2. In spite of repeated adjournments and two notices, appellant neither appeared on hearings dated on 14.10.1996, 30.10.1996, 28.9.1998, 30.10.1998 and 20.11.1998, nor sent any communication of request, nor any representation on his behalf. The appellant's firm is at Kurla (W).

The Learned DR was heard. Appeal memorandum and orders of lower authorities, gate passes copies, Rule 173M of Central Excise Rules are perused. The main thrust of the appellant's case is that as per Drugs and Cosmetics Act, every manufacturer is required to affix batch name on the finished product, which indicate that the product has been manufactured under a particular batch, which cannot be changed even if the product is reprocessed or repacked subsequently. The batch No. is very vital link in establishing details of the production and is a statutory obligation. Gate pass contains batch Nos. and all details are mentioned regarding clearing after repacking. Batch No. is sufficient to co-relate the receipt of the material and clearance of the same.

3. Point for consideration is whether these are sufficient grounds to set aside the orders of lower authorities? My finding thereon is in the negative.

4. It is seen from the gate passes 309 and 317 that a quantity of 14000 units and 7800 units respectively of different batch (No. 45, 856 and 45, 857) was also cleared along with the units of repacked goods under gate pass 288 a quantity of 5825 units was cleared. This quantity also shows a batch No. of 29-330YA from the total quantity of 23400 received by the assessee back into factory under Rule 173M, 3825 Nos. pertaining to that of No. 29-330YA. One of these, the assessee repacked and despatched 8400 no. of batch No. 29-330IA totally. However, No. 3825 in GP 288 belonging to some batch does not appear in the batches removed after repacking as explained by the assessee, without preparing separate gate pass for the removal of goods which were brought back under 173M nor was he able to establish co-relation between the goods received and despatched after repacking. Account in form V is not maintained in prescribed records in respect of goods, which was duty paid, brought back for repacking. Duty paid goods brought back had to be stored separately under Rule 173M for repacking, refining it, which is not done by appellant and refund claim is rejected by Assistant Collector.

5. The impugned order of Respondents highlights that separate gate pass would no doubt facilitate co-relation, but other goods cleared along with this, under same gate pass cannot disentitle the appellant for the refund. There is nothing in the rules to prevent this. Appellant company does not deny that it does not maintain the records in Form V, but claimed the failure to be procedural. The company also does not deny that the goods were not sold separately. Assistant Collector's view regarding the admissibility of the refund has not been successfully challenged. With this lower authorities order is confirmed.

6. I find from Rule 173 of Central Excise Rules, the reasoning of both lower authorities is well founded and just and proper. Appellant has not substantiated as to how mere batch number is sufficient to co-relate the receipt of the material and clearance of the same. Gate pass does not confirm the batch name of the finished product, as urged in the appeal memorandum. So under these circumstances there are no sufficient and satisfactory grounds to allow the appeal. The point

raised in para 3 is answered in the negative. Hence I pass the following order.

For the reasons indicated above, the appeal cannot be allowed, and it is rejected.