

Commissioner of Central Excise Vs. Borachem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1999

Reported in : (2000)(117)ELT781Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Borachem Ltd.

Judgement :

1. M/s. Borachem Industries (Pvt.) Ltd., the respondent to this appeal by the Commissioner, is engaged in the manufacture inter alia of ranitidine tablets 150 and 300 mg. It claimed classification of these products under Heading 3003.20 of the Tariff Act, as medicaments (other than patent or proprietary) other than those which are exclusively used in ayurvedic, unani, siddha, homoeopathic or bio-chemic systems. The department found that the product contained on its packing, and on the labels of their container a name MAGNUS. This name according to the department attracted the provisions of Note 2(ii) of the chapter, and therefore the product was classifiable as patent or proprietary medicament. Notices were issued accordingly proposing reclassification of the product under 3003.20 and demanding duty payable in addition as a result of that classification for goods already cleared. The assessee, in reply, took the stand that MAGNUS was only a name of the division of M/s Boots Pharmaceutical, which marketed the product and therefore was not a name or label within the meaning of the definition in the chapter note. The Assistant Collector did not accept this contention. He confirmed the proposal in the notices. On appeal, the Collector (Appeals) held that the word

was only a monogram to identify the manufacturer, and applying the ratio of the Supreme Court's judgment in Astra Pharmaceuticals (P) Ltd. v. C.C.E., 1995 (6) RLT 445 (S.C.) held the product not to be a patent or proprietary medicament and allowed the appeal. This appeal by the department is from that order.

2. The contention in the appeal is that the product in addition to its name contained the word "ADVENE" 150 mg and 300 mg. This indicated the goods to be patent or proprietary medicine. Now this was not an issue in the notice. The notice only alleges presence of the word MAGNUS as against the classification claimed. The finding of the Collector (Appeals) with regard to this has not been questioned in the appeal.

The appeal is therefore entirely on a new ground and for that reason alone not acceptable. In addition, it is clarified by the advocate for the respondent that ranitidine was manufactured by it were being cleared in two packs, one with the name Advene 150 mg and 300 mg and other without that. The product bearing this name has been classified as a patent or proprietary medicament under Heading 3003.20. He produces a copy of the classification list dated 1-3-1994 which confirms this contention. We therefore see no reason to interfere.

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