Usv Ltd. Vs. Cc, Acc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-07-1999

Reported in : (1999)(85)LC66Tri(Mum.)bai

Judge : J S Murthy

Appellant : Usv Ltd.

Respondent : Cc, Acc

Judgement :

1. With the consent of both the sides the appeal is taken up for hearing, granting waiver of deposit as prayed in the stay application.

2. The appellant have imported SIMVASTATIN USP 23, a drug under bill of entry No. 3257 dated 5.9.1998, which on examination was found not to be labelled in the prescribed manner showing the name of the drug, its pharmacopoeia standard and date of expiry, deemed to be mis-branded one as per Section 9(b) of Drugs and Cosmetics Act. On testing, the goods tested positive and M/s. Hexa Analytical Laboratories opined that the importer mis-branded the goods and is prohibited under Section 10(b) read with Section 13 and 14 of Drugs & Cosmetics Act, 1940. Therefore the goods become liable for confiscation under Section 111(d) of the Customs Act, 1962 and the importer liable for penal action under Section 112 of the said Act.

3. Appellant waived show cause notice and attended personal hearing on 19.11.1998. After hearing the appellant and perusing the records the impugned order was passed by the Commissioner of Customs, Air Cargo Complex, Sahar, Andheri (E), Mumbai holding that the goods are liable for confiscation as it is mis-branded drugs for which the import is banned and it is not fit for human consumption. On test of the goods it is found to be as declared by them from the point of description and pharmacopoeia standard. Penalty of Rs. 1,50,000/- was imposed on the appellant under Section 112(a) of the-Customs Act, 1962 and the goods were confiscated with redemption fine of Rs. 6,00,000/- rejecting the release of the goods for home consumption.

4. The Learned Counsel for the appellant has submitted that the supplier has informed that the goods were labelled in the bottom or may be under the flaps which requires checking. He further contends that if the labels are existing on the goods then it ceased to be prohibited goods. The Learned DR points out the test results certificate and submitted that date of manufacture and expiry date is not indicated therein, for which the Learned Counsel for the appellant replies that since labels were not to be found it could not be filled up there.

5. From the above submissions it is seen that the existence of the label on the goods in any part of it changes the nature of the goods which affects the decision of the Commissioner of Customs under the impugned order. There is no harm in re-checking the goods for the existence of the labels as categorically informed by the supplier by their letter dated 19.1.1999. So the appeal is allowed and remanded back to the Commissioner for re-examination of the goods regarding the existence of the label in the bottom of the boxes or under the flaps, and after hearing the parties for disposal of the appeal afresh within a reasonable time of 4 to 6 weeks from the date of receipt of this order.