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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-29-1984

Reported in : (1984)(18)ELT62TriDel

Appellant : Gufic Private Ltd.

Respondent : Collector of Customs

Judgement :

1. The captioned appeals were initially filed as a Revision Application to the Central Government which, under Section 131-B of the Customs Act, 1962, has come as transferred proceedings to this Tribunal for disposal as if it were an appeal filed before it.

2. Another appeal No. CD(SB)(T) A. No. 833/81-C was listed for hearing on 18-5-1984 and a notice to that effect was despatched by the Registry to the appellants and their Advocates. In reply, a letter dated 4-5-1984 was received from M/s Kantawala & Co., Advocates & Solicitors, Bombay, stating that, in view of certain matters fixed for hearing before the Bombay Bench, Dr. Nitin Kantawala would not be in a position to attend the hearing before this Special Bench at New Delhi on the same date. In the circumstances, it was requested that the hearing might be adjourned to a suitable date in the month of June, 1984. On the day of hearing, however, Shri Ashok Gupta, Advocate, appeared in the Court and submitted that 4 appeals of the same appellants (the present appeals) were coming up for hearing on 29-5-1984 and so, he requested, that that case be heard along with the present 4 appeals.

Agreeing to this request, we fixed the hearing of all the cases on 29-5-1984. However, on the cases being called on for hearing today, no one appeared on behalf of the appellants. But a letter dated 25-5-1984 from Kantawala & Co. has been placed before us in which it is stated that since Dr. Nitin Kantawala will be away from India during the latter part of June, 1984, all the 5 appeals of the appellants might be fixed for hearing on 19th or 20th July, 1984. We are constrained to observe that adjournment of the cases is being sought for on the grounds which are either untenable or which are not unforeseeable.

Making such requests for adjournment at the last minute causes avoidable expenditure of public time and money and we would not like to encourage such practice. When it was made clear to Shri Ashok Gupta that we would be hearing all the appeals today, as prayed for by him on behalf of Dr. Kantawala, we do not see any reason why no arrangement for representation was made to argue the case today. We, therefore, do not see any reason, much less a good reason, to adjourn the hearing of these cases. We have, therefore, decided to hear the Departmental Representative and decide the case on merits.

3. The issue involved in the captioned appeals being the same, all the appeals are disposed of by this common order.

4. At the outset, it must be mentioned that there is some confusion in the matter of filing these appeals. With a common order bearing No.S-49-1340/1342/1343/80R & 14H/82R, the Appellate Collector of Customs, Bombay, disposed of 4 appeals, one of which was from M/s Bombay Paxwell Pvt. Ltd. and 3 from M/s Gufic Pvt. Ltd. (the present appellant).

Therefore, we are concerned in the present proceedings with only 3 appeals against Order-in-Appeal No. S. 49-1342/1343/80R and 1411/82R.However, at the instance of the Registry M/s Gufic Private Ltd. filed 4 sets of appeal papers whereas it was necessary for them to have filed only 3 sets of appeal papers. The appeal filed against Order No. S.49-1340/80R, not being competent, may be returned by the Registry to M/s Gufic Private Ltd., along with the fees (if any) deposited with regard to this appeal.

5. The dispute in the 3 appeals concerns Para Chloro Benzoic Acid. The appellants contended before the Appellate Collector that they are manufacturers of drugs and that they use the imported chemical as a drug intermediate in their manufacturing activity. On this basis, they claim that the benefit of Excise Notification No. 55/75 should be extended to them and the countervailing (additional) duty collected from them refunded. The Appellate Collector, however, did not accept the contention. He observed that, while he did not doubt the appellants' submission that they used the imported chemical only in the manufacture of drugs, the said chemical had versatile end uses. A chemical, to qualify for Notification No. 55/75 as a drug intermediate, should have its principal or main use as a drug intermediate. However, all available technical information seemed to confirm that Para Chloro Benzoic Acid was a versatile chemical with many uses. On this basis, he rejected the appeals.

6. In the Revision Application (the appeals before us), it has been urged that the appellants imported Para Chloro Benzoic Acid for the manufacture of the bulk drug, Mebendazole. A drug intermediate is defined as a chemical which is structurally incorporated into the nucleus of the final drug, as is the case here. Reliance has been placed on a certificate issued by the Food and Drugs Control Administration, Ahmedabad, to the effect that the appellants are licensed drug manufacturers and that they manufacture Mebendazole by using Para Chloro Benzoic Acid as intermediate.

7. The Departmental Representative supported the impugned order for the reasons stated therein.

8. We have considered the submissions before us. We had occasion to construe Notification No. 55/75 which, among other things, exempts from excise duty all drugs, medicines, pharmaceuticals and drugs intermediate not elsewhere specified. We have, in our Order Nos. C-550 to 552/1983 dated 30th November, 1983 in Appeal Nos. CD(SB)(T) A. No.350/80-C, 689/80-C and 690/80-C in the case of M/s Fairdeal Corporation (Pvt) Ltd., Bombay v. Collector of Customs, Bombay, 1984 (16) E.L.T.168 (Tribunal) held that-glyoxal, the chemical in that case, which found use in the manufacture of drugs should be extended the benefit

of the duty exemption as a drug intermediate even though it had other uses. The fact that the subject chemical is a drug intermediate and that it is used by the appellants in the manufacture of drugs, has been accepted in the Appellate Collector's order. This is also supported by the certificate issued by the Gujarat Food and Drugs Control Administration. Following our earlier decision, we set aside the impugned orders, allow the appeals and direct consequential relief to the appellants within 3 months from the date of this order.