Comteck Laboratories Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-29-1999

Reported in : (2000)(118)ELT664Tri(Mum.)bai

Appellant : Comteck Laboratories

Respondent : Commissioner of Central Excise

Judgement :

1. When this appeal was called out, none was present for the appellants. On the earlier occasion also none appeared. This case was therefore taken up for disposal on merits, after hearing Shri Patwari, the ld. JDR for the revenue.

2. In approving the classification claimed by the assessees of IV infusion sets and PVC plastic pouches, the Assistant Collector denied the benefit of Notification No. 339/86, dated 11-6-1986. In doing so, he referred to and relied upon an order passed by the then Commissioner (Appeals). Against this order the assessees filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) rejected the appeal holding thus: "The impugned order and the submissions have been considered by me.

The Assistant Commissioner while finalising the classification list relied on the directions and decisions given by my predecessor Shri Gowri Shankar in this Order-in-Appeal No. 329 to 332 dated 3rd May, 1994. Since the decision of the Assistant Commissioner's order it will not be appropriate on my part to sit in judgment over the order passed by the Commissioner (Appeals). In fact the appellants should have filed this appeal to the Tribunal instead of Commissioner (Appeals) as held by the Tribunal in the case of Shila Foam Pvt.

Ltd. v CCE - 1993 (68) E.L.T. 395. The appeal in this case is not maintainable to the Commissioner (Appeals). The appeal is accordingly rejected." 3. We find that the Commissioner (Appeals) has made an error in holding that the view held by his predecessor was binding on him. In the same circumstances, an order of the superior forum would be binding on the Commissioner (Appeals) but his freedom to critically examine his predecessor's finding cannot be taken away. The learned Commissioner (Appeals) could have extracted his predecessor's finding and could have agreed therewith and then dismissed the appeal before him. In not doing so, he has not applied his mind to the facts before him. This order therefore cannot be sustained.

4. The appeal is allowed. The proceedings are remitted back to the jurisdictional Commissioner (Appeals) who will, after giving an opportunity to the appellants to be heard, decide the issue on merits.