Precise Laboratories Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2000

Reported in : (2000)(119)ELT684TriDel

Appellant : Precise Laboratories Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. For reasons recorded below, we dispense with the requirement of pre-deposit of duty demand of Rs. 11,63,937.98 p. and stay its recovery and proceed to dispose of the appeals themselves, with the consent of both the sides.

2. The brief facts of the case are that the assessees manufacture 'Dabur Raughan-E-Badam Shireen' classifiable under GET sub-heading 3003.30. They claimed exemption from duty in terms of Notification No.75/94 dated 29-3-1994 on the ground that the product was a Unani medicine covered by the Notification. The Assistant Collector held that the item was liable to duty at the rate of 10% ad valorem as P & P medicines under GET sub-heading 3003.10. The Commissioner (Appeals) dismissed the appeals filed by the assessees on the ground that they did not produce a certificate from the appropriate Drug Authorities, in accordance with CBEC Circular dated 3-4-1996 which clarified that the benefit of exemption under SI. No. 3 of the Notification No. 75/94-CE should not be denied to Ayurvedic medicines if they are manufactured with the formulae prescribed in the authoritative text books and sold under generic name mentioned in the authoritative text books but contain preservatives, inner excipients, binding agents

not having any therapeutic value and clarified that in such cases, the Assessing officer may obtain a certificate to be produced by the manufacturers from the appropriate Drug Authorities that the drugs specified the following conditions: (1) the medicament has been prepared in accordance with the formula prescribed in the authoritative text books; (2) ingredients added other than those prescribed in the text books should not have therapeutic value.

3. The appellants who are represented by Shri Rajesh Chhibber, learned Advocate, submitted that they were never put to notice regarding production of certificate as stipulated in the CBEC circular and they have since obtained certificate dated 21-1-2000 from the office of the Regional Ayurvedic & Unani Officer, Ghaziabad and pray that the matter may be remanded for fresh decision in the light of the above certificate.

4. The prayer for remand is opposed by the learned DR Shri Baboo on the ground that the certificate has been obtained after passing of the impugned order and for the reason that such certificate is not relevant for Unani medicines since the CBEC circular relates only to Ayurvedic medicines.

5. From a careful perusal of the impugned order, it is clear that the assessees appeals have been dismissed by the lower Appellate authority on the ground mat they did not produce the required certificate as mentioned in the CBEC circular dated 3-4-1996. We agree with the appellants that opportunity to obtain and produce such certificate should have been extended to them before disposal of their appeals by the Commissioner (Appeals). We therefore, set aside the impugned order and remand the matter for fresh decision in the light of the certificate dated 21-1-2000 issued to the appellants by the officer of the Regional Ayurvedic and Unani Officer, Ghaziabad, to the jurisdictional Assistant Commissioner who shall decide the matter afresh after extending reasonable opportunity to the appellants of being heard and explaining their case. The appeals are thus allowed by remand.