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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-15-2000

Reported in : (2000)(120)ELT187TriDel

Appellant : Compack Labs

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal filed by M/s. Compack Labs the matter relates to the eligibility of the Notification No. 339/86-C.E., dated 11-6-1986 under Sl. No. 23 of the Table annexed to that notification.

2. We have heard Shri A.R. Madho Rao, Advocate for the appellants and Shri Satnam Singh, SDR for respondent-Revenue. We have gone through the records. The facts are not disputed. As explained by the learned Advocate the classification list effective from 1-4-1992 was approved by the Assistant Collector of Central Excise on 17-6-1992 extending the benefit of notification 339/86-C.E. to the products in question. This approval of the classification list was challenged by the department before the Collector of Central Excise (Appeals) who noted that the matter was covered by the Calcutta High Court decision in the case of Trio Marketing Pvt. Ltd. v.Union of India. 1992 (57) E.L.T. 249 (Cal.) and that the assessee, the respondents before him did not question the applicability of that decision to the products in dispute. He set aside the approval of the classification list.

3. We find that under the order-in-original dated 14-2-1992 the Assistant Collector of Central Excise had already allowed the benefit of Notification No. 339/86-C.E. to the products in question and had observed that from the samples it was seen that the infusion sets manufactured by the party were made of plastics and were required to be thrown away after one time use and therefore, it could not be said that such infusion sets satisfied the description given under S. No. 23 of the schedule-A to the Notification No. 339/86-C.E. There is nothing on record that this decision of the Assistant Collector of Central Excise dated 14-2-1992 had been challenged or had been reversed.

4. The learned Advocate referred to the clarification issued by the Principal Collector of Central Excise dated 18-3-1992 in which it had been clarified that the intravenous fluid administration sets were eligible for the benefit of Notification No. 339/86-C.E. and pleaded that it was only under communication dated 28-8-1992 that the view taken in the letter dated 18-3-1992 was reversed. We find that even before the letter dated 18-3-1992 the matter had been adjudicated by the Assistant Collector of Central Excise under order dated 14-2-1992 we also find that the Calcutta High Court decision is dated 14-2-1991 and admittedly covered the goods in dispute. This decision has been followed by the Tribunal in a number of cases.

6. The learned advocate referred to the Madras High Court decision in the case of Unival Surgical Traders v. Union of India - 1994 (114) E.L.T. 811 (Mad). It was a customs matter and related to the import of Scalp Vein Sets. The goods before us are the infusion sets for long-term use as described under Sl. No. 23 of the notification referred to above. We find that the goods are not the same goods and the circumstances are also not the same before the Honourable Madras High Court. As the matter is directly covered by the Calcutta High Court and this position has also been admitted by the assessee before the appellate authority, we do not find any infirmity in the view taken by him. We do not find any merit in this appeal and the same is rejected. Ordered accordingly.

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