

Jagsonpal Pharma Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-2000

Reported in : (2001)(94)LC277Tri(Delhi)

Judge : B T K.K.

Appellant : Jagsonpal Pharma Ltd.

Respondent : Cce

Judgement :

1. The appellants manufacture P&P Medicines, falling under Heading 3003.10 of the Central Excise Tariff Act, 1985. They availed modvat credit on disposable syringes and needles supplied by them along with the injections manufactured by them. These syringes and needles are bought out items. They took credit of duty paid on disposable syringe and needle. The Additional Commissioner of Central Excise, Faridabad vide her Order dated 2.2.1998 directed for the recovery of modvat credit totally amounting to Rs. 1,95,460.00 availed by the appellants during the period from 1.10.1993 to 30.9.1994. The Additional Commissioner in her order relied on the decision of the CEGAT in the case of Jagsonpal Pharmaceuticals Ltd. v. CCE, New Delhi 1997 (92) ELT 414 (T) in which it is held that syringe and needle is not an input in or in relation to manufacture of final product.

2. The Commissioner (Appeals) upheld the order passed by the Additional Commissioner rejecting the appeal of the party giving rise to the present appeal.

3. Shri M.P. Devnath, Advocate speaking for the appellants placed reliance on the decision of the Ld. Single Member of the Tribunal in the case of Ethico Drugs & Chemicals Mfg. Co. v. CCE, Indore 1996 (84) ELT 49 (T). In this case the appellants had cleared an item called emergency kit consisting of Zenoltic injection, disposable syringe and needle and cotton swab. The injection was made in the factory of the appellants and syringe, needle and swab were procured from outside. In this decision it is observed that the entire kit is one item and the assessable value of each of the goods that goes into making it up, shall be included, it logically follows that each of these is an input for the kit which would be different from the antibiotic itself. In the light of this observation, the Tribunal held that the appellants are entitled to take credit on these inputs. The Ld. Counsel for the appellants would like me to refer the matter under consideration to the Larger Bench of the CEGAT as in his view there is difference of opinion between the two Benches of the Tribunal. This submission cannot be countenanced for more than one reasons. First of all there is a specific order of the Tribunal in respect of the very same appellant settling the very same issue against them. Secondly, this decision is by a two Members Bench whereas the decision in the case of Ethico Drugs & Chemicals is given by a single Ld. Member. It is well settled legal proposition that the former would take precedence over the latter. In the last, the latter decision is rendered per incuriam of the former and on that account also it would not have any binding precedence.

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