

Ramsay Pharma (P) Ltd. Vs. Commissioner of C. Ex.

Ramsay Pharma (P) Ltd. Vs. Commissioner of C. Ex.

SooperKanoon Citation : sooperkanoon.com/19605

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-01-2000

Reported in : (2001)(127)ELT789TriDel

Appellant : Ramsay Pharma (P) Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The above appeal arises out of the order of the Commissioner of Central Excise, Allahabad who has confirmed a duty demand of Rs. 21,21,385/- upon the appellants herein who are manufacturers of PP medicines falling under CET Sub-heading 3003.10, by denying them the benefit of SSI Notification 175/86 dated 1-3-1986 as amended and Notification 1/93 dated 28-2-1993 as amended, holding that the appellants are owned and controlled by another Company viz. Shree Baidyanath Ayurved Bhawan Ltd., Naini, carrying on the same business of manufacturing and selling allopathic as well as ayurvedic medicines falling under CET Sub-headings 3003.10 and 3003.30 respectively, and has imposed a penalty of Rs. 21 lakhs upon the appellants.

2. It is the contention of the appellants who are represented by their Counsel, Shri Vivek Kohli, that non-issue of show cause notice to M/s.

Shree Baidyanath Ayurved Bhawan Ltd., whose clearances have been clubbed with those of the appellants itself vitiates the entire proceedings and in this connection he relies upon the decision of the Tribunal in the case of Ogesh

Industries v. Commissioner of Central Excise, Kanpur M/s. Dawn Fire Works Factory and Ors. v. Commissioner of Central Excise, Madras reported in 1999 (31) RLT 104.

3. We see great force in the above submission. In the case of Ogesh Industries cited supra, it has been held that when a demand is raised by clubbing of the value of clearances of two units, and show cause notice has been issued only to one unit and not to the other, when the separate existence of both Units was projected the notice is bad in law and the proceedings have been set aside by the Tribunal on this basis.

The above decision has been followed in the case of Dawn Fire Works Factory and Ors. and both these decisions have been followed in the recent decision in the case of S.K.N. Gas Appliances v. Commissioner of Central Excise, New Delhi reported in 2000 (120) E.L.T. 732 (Tribunal).

Learned DR Shri Dube seeks to distinguish the decisions in the case of Ogesh Industries and Dawn Fire Factory Works cited supra by submitting that the present case is not one of clubbing of clearances; however, we find from the impugned order that the Department has proceeded on the basis that the aggregate value of clearances of excisable goods effected by the appellants and all the units of M/s. Shree Baidyanath Ayurved Bhawan taken together exceeds the ceiling limit on value of clearances prescribed in the SSI exemption Notifications. Therefore, the ratio of the above cited decisions is applicable on all fours to the present case and following the same, we set aside the impugned order as bad in law on this preliminary point alone without going into the merits of the case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com