Ranbaxy Laboratories Limited Vs. Commissioner of Cus., Acc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-20-2000

Reported in : (2001)(133)ELT227Tri(Mum.)bai

Appellant : Ranbaxy Laboratories Limited

Respondent : Commissioner of Cus., Acc

Judgement :

1. This appeal is against the order of the Commissioner of Customs imposing on the appellant a penalty of Rs. 26.84 lacs under Section 114 of the Customs Act, 1962.

2. The appellant had reimported a consignment of cefaclor suspension and capsules, which was found unsuitable by the consignee, an associated firm of the appellant in the Irish Republic. In the Bills of Entry filed for clearance, the goods were described correctly as cefaclor pharmaceutical capsule and suspension. The Central Excise tariff heading indicated for the purpose of levy of additional duty of Customs was 3003.20. The goods were cleared on the basis of this classification claimed. No additional duty of Customs was levied, as no duty was payable under the heading. Subsequently, the department issued notice alleging short levy of duty. The notice alleged, rightly, that the goods were classifiable, not under sub-heading 32 of Heading 3003, but under sub-heading 20. It is on this basis that the Commissioner has imposed a penalty on the appellant under Section 114 of the Act. The appellant had already paid the duty due.

3. It is the contention of the appellant that sub-heading 32 was wrongly shown in the Bills of Entry. On its coming to know about the wrong classification, it wrote to the department in September, 1999, pointing out the wrong classification and tendering the duty payable with interest for the intervening period. Therefore, penalty is not leviable.

4. After hearing the Departmental Representative, we are unable to uphold the Commissioner's order for several reasons. Firstly, the only reason that the Commissioner has given for imposing a penalty is that the importer cleared the goods without payment of duty, and paid the amount with interest on its own. If anything, this is a reason for not imposing penalty. Secondly, Clause (m) of Section 111 of the Act which was invoked in the notice will not apply. The appellant had correctly declared the goods as cefaclor and as a pharmaceutical product.

Cefaclor is the generic name for the antibiotic, as is clear from technical publications, for example, the Extra Pharmacopoeia of Martindale. The department should have been aware, by a minimal application of mind that the goods were not classifiable under sub- heading 32 of Heading 30.03. That sub-heading covers bio-chemical medicine. There was more reason for the department to notice the correct classification. The classification in the same Bills of Entry for levy of Customs duty was correctly shown as sub-heading 20 of Heading 30.03. Lastly, the fact that the appellant had itself tendered the duty voluntarily after pointing out the mistake to the department, entirely on its own volition, also goes in its favour.