M/S. Unique Pharmaceutical Vs. Commissioner of Cen. Excise,

M/S. Unique Pharmaceutical Vs. Commissioner of Cen. Excise,

SooperKanoon Citation : sooperkanoon.com/21755

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-23-2001

Reported in : (2001)(135)ELT1160Tri(Mum.)bai

Appellant : M/S. Unique Pharmaceutical

Respondent : Commissioner of Cen. Excise,

Judgement :

1. On hearing both the sides, the appeal itself was taken up for final disposal.

2.The appellants manufactured medicaments and cleared them as P or P medicines under sub-heading nO.3003.10 from 1992-96. From time to time classification lists were approved and the goods were cleared on paymentof duty. In June 1996, some Preventive officers visited the factory and in the fact of the aproved classification lists declared that the goods were Generic products falling under sub-heading No.3003.20 eligible for clearance without payment of duty. it was unilarterally held that the input stage credit taken by the assessees was wrong and was required to be reversed. In the absence of any proceedings to reditermine the classification and especially in the absence of the show cause notice, the assessees were "pursuaded" to reverse the credit. However, the assessees within the prescribed time limit filed refund claim for the refund of the reversed modvat credit.

The Asstt. Commissioner issued the Show cause notice and dismissed the claim justifying the arbitary reclassification. The assessees filed an appeal. The

Commissioner (Appeals) allowed the appeal on the following order:- "I have carefully considered the facts of the case, findings given in the impugned order and law on the subject. I find that, the issue in the present case in regarding classification of the product which have been contested by the department officers and differential duty recovered from the appellant without even issue of basic SCN and the appellant had contested this ad-hoc recovery and filed refund calim which was rejected. As such, I have no other alternative but to send the case back for denovo consideration and deciding the case afresh after reviewing the CL in question and by following all the necessary procedures as laid down under the law." 3. The appeal is aginst this order. The claim made is that the ld.Commissioner has not understood the reality of the situation and the grounds on which the demand is made to harm the assessees interests.

4. The officers who approved the classification and finalised the assessments are under the jurisdiction of the same Commissioner as of the Central Preventive Unit. In that case, where the preventive officers are of the impression that the assessment is wrong, it is appropriate for them ot bring this to the notice of the jurisdictional Commissioner who if satisfied of the merits of the claim made by the preventive officers; would direct the jurisdicitonal authorities to redetermine the classification. At all time, the re-determination would only be perspective. It could be retrospective if the department holds that the original classification was arrived at by a fraud committed by the assessee. In the present case it was improper and illegal on the part of the department to have gone against the established practice without following any of the steps prescribed in the law. Where the Asstt. Commissioner passes an order approving a particular classification, the law permits a strict time frame for the Commissioner to review and make directions to the authorities to refer the issue to the Commissioner (Appeals) for determination of its legality and propriety. The framers of the law have done with deliberation. The protection given to the assesses in this matter cannot be taken away by the preventive party. The entire action of the department in seeking reversal of the madvat credit was wrong. The show cause notice seeking denial of refund goes much further.

It presumes that the original classification was wrong when there are not grounds for such presumption. It is unfortunate that the ld.Commissioner did not see it in this manner, His order of remand would not achieve anything for the assessees since in his order he has also made certain presumptions which are without basis.

5. The appeal is allowed. The proceedings are remanded back to the Commissioner (Appeals). He will decide the issue in terms of the observations made in this order.