Commissioner of Central Excise and Vs. F.D.C. Limited

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SooperKanoon Citation : sooperkanoon.com/22721

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2001

Reported in : (2001)(133)ELT171Tri(Mum.)bai

Appellant : Commissioner of Central Excise and

Respondent : F.D.C. Limited

Judgement :

1. Respondent is a manufacturer of fairgenol, mycoderm powder and cotaryl skin cream. They classified it as falling under sub-heading 3003.10 of the schedule to the Central Excise Tariff. The jurisdictional officer wants to classify mycoderm powder under 3307.20 and cotaryl skin cream under heading 33.04. In this view show cause notice was issued demanding duty on these products manufactured and cleared by the respondents. Respondents, the manufacturer, disputed the claim and contended that the products fall under heading 30.03 as medicaments and not under Chapter 33. Overruling the contention raised by the respondent the jurisdictional officer by order No. 123/DMD/95 dated 24/12/1995 confirmed the demand of duty and also imposed penalty invoking the provisions contained in Rule 173Q. Respondents took up the matter in appeal. The appellate authority by order-in-appeal No.A/309/96 dated 21/08/1996 allowed the appeal holding that three products manufactured by the respondents are falling under sub-heading 30.03. Aggrieved by this order Revenue has come up in appeal.

2. Except reiterating the stand taken by the jurisdictional officer, no specific reason is mentioned in the memorandum of appeal as to why the Commissioner

(Appeals) has gone wrong in classifying the product. The Commissioner(Appeals) in the impugned order has analysed the chemical composition of the three products concerned in this case. He referred to the opinion given by the Chemical Examiner on examination.

Manufacturer also produced certificates issued by doctors and chemists in support of their contention that the three products are to be treated as medicaments. In the absence of any data for overruling the conclusions arrived at by the Commissioner (Appeals), based on the certificates issued by doctors and chemists and Chemical Examiner, we are not in a position to upset his conclusions. The result therefore is we do not find our way to interfere with the conclusions reached by the appellate authority.