iveon Laboratories Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/26585

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-06-2001

Judge : S T Gowri, G Srinivasan

Appellant : iveon Laboratories

Respondent : Commissioner of Central Excise,

Judgement :
1. The Commissioner (Appeals) has dismissed the appeal before him for failure to deposit the entire duty and penalty.

2. The duty has been demanded on the ground that the discount that the applicant gave to one of its buyers for the sale of ciprofloxacin manufactured by it is not permissible. One of the grounds that had been raised before the adjudicating authority was that the demand was barred by limitation, since the fact of the discount had been disclosed in the price list which was submitted to the department and approved by it.

The Additional Commissioner says that the extended period would be available for the reason that the circumstances leading to the discount were not communicated. It is prima facie difficult to justify his view.

Once the fact of the discount known to the department it was open to it - indeed required of it - to verify the circumstances leading to the discount. On the basis of it, therefore, we find that the extended period would not apply.

3. It would then follow that the deposit of duty of Rs. 58,459/- and penalty of Rs. 10,000/- would not prima facie be required to be made.

4. Accordingly we take up the appeal itself, allow it setting aside the impugned order. The matter is now remanded to the Commissioner (Appeals) for deciding the appeal on merits, in due course, without insisting on deposit.