Surya Pharmaceuticals Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-22-2002

Reported in : (2002)(103)LC356Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Surya Pharmaceuticals

Respondent : Cce

Judgement :

1. M/s Surya Pharmaceuticals have filed this appeal being aggrieved by the impugned order passed by the learned Commissioner, Central Excise confirming demand of Rs. 20,20,069/- and a penalty of equal amount.

2. The facts of the case briefly stated are that the appellant is engaged in the manufacture of drugs. A dispute arose as to whether the benefit of exemption in terms of Serial No. 6 of the Table annexed to Notification No. 6/94-CE dated 1.3.1994 was available to bulk drug manufacturers during the period from 6.1.1995 to 8.2.1995. In terms of Serial No. 6 of the notification cited above the effective rate of duty payable on bulk drugs specified under first schedule to Drugs (Prices Control) Order, 1987 as amended from time to time was 10% ad valorem.

The appellant filed C/List claiming concessional rate of duty under Notification No. 6/94. However this Notification was amended by Notification No. 7/95-CE dated 9.2.1995 whereby Serial No. 6 and the entries relating thereto under Notification

No. 6/94 were omitted along with explanation to that Notification. Before amendment of Notification 6/94 the Drugs (Price Control) Order, 1987 was repealed w.e.f. 6.1.1995 by the Drugs (Price Control) Order, 1995. The Department took a view that such benefit could not be extended to the appellant's bulk drugs after repeal of the Drugs (Price Control) Order, 1987. The Department also observed that under Notification No. 6/94 the concessional rate of duty was no longer available to bulk drugs after omission of Serial No.6 from that Notification. The Department, therefore, proposed to deny the benefit of concessional rate of duty to bulk drugs during the period from 6.1.1995 to 8.2.1995. The Commissioner who adjudicated the case held as indicated above.

3. Arguing the case for the appellant Shri J.P. Kaushik, learned Counsel submitted that the issue involved in the present case is squarely covered in favour of the appellant by the decision of the South Regional Bench in the case of Karnataka Chemsyn Ltd. v. CCE Bangalore reported in 2001 (44) RLT 407. He fairly submitted that the very issue was decided in favour of the Revenue by the Delhi Bench of this Tribunal in the case of Ranbaxy Laboratories Ltd. v. CCE reported in 1999 (35) RLT 575. Learned Counsel referred to certain decisions of the Hon'ble Supreme Court which were considered by the Bangalore Bench but were not brought before the Delhi Bench in the case of Ranbaxy Laboratories Ltd. in view of the different views expressed by the coordinate two benches. The Larger Bench in its Miscellaneous Order No.1/2001 dated 28.12.2001 in para 17 see 2002 (100) ECR437 (T-LB) held as under: 17. We find no merit in the contention of the Revenue that when Drugs (Price Control) Order, 1987 was not available during the short period from 6.1.1995 to 9.2.1995, there is no definition for 'bulk drugs' and, therefore, the exemption granted will not be available to it. Even if the Drugs (Price Control) Order 1987 was not available one has to consider as to how the term was understood hitherto and what was the meaning attributed to bulk drugs' as specified under the First Schedule and 'bulk drugs' outside the First Schedule. It is relevant to note that even though the Drugs (Price Control) Order 1987 was repealed on 6.1.1995, Notification issued in exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excises & Salt Act, 1944 by the Central Government were not cancelled on 6.1.1995. For this reason also we hold that the benefit of concessional rate of duty available to manufacturers in respect

of serial No. 6 of the Table annexed to Notification No. 6/94-CE dated 1.3.1994 will be available during the period from 6.1.1995 to 9.2.1995. We agree with the view taken by the South Regional Bench, Bangalore of this Tribunal in Karnataka Chemsysn Ltd. v. CCE Bangalore 2001 (44) RLT 407.

4. Following the ratio of the Larger Bench decision in this case we allow the appeal of the appellant. Consequential relief, if any, shall be admissible to the appellant in accordance with law.