

Commissioner of Central Excise, Vs. Pure Pharma Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-09-2002

Reported in : (2002)LC177Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise,

Respondent : Pure Pharma Ltd.

Judgement :

1. The issue involved in this Appeal preferred by Revenue is whether the placing of different medicaments in a container amounts to manufacture in terms of Note 5 to Chapter 30 of the Schedule to the Central Excise Tariff Act.
2. Shri V.K. Verma, learned Departmental Representative submitted that the respondents M/s. Pure Pharma Ltd. manufacture medicines as well as purchase them from the market; that both the type of medicines were placed by them in a container which was called by them as medicine kit; and supplied to M.P. Laghu Udyog Nigam; that the duty was paid only on the medicine manufactured by the respondents and not on the boughtout medicines; that a show cause notice were issued to the respondents for demanding Central Excise duty on the medicines kit itself; that the Assistant Commissioner under Order No. 191/2000, dated 11-5-2000 dropped the further proceedings holding that the medicine kit was prepared for a specific purpose that is to distribute the medicines free of charge to the needy ones as per the prescriptions of the Doctor and not the medicine kit as such; that

the packing of different medicines in a printed corrugated boxes was just for convenience to supply the medicine in such a manner that the project receiving different kind of medicines kits could easily identify and differentiate them from other medicine kits and could be supplied to the Doctor for free distribution as per the disease of the patients; that the Assistant Commissioner further held that Note 5 to Chapter 30 is not attracted as neither the medicine kit nor the medicine contained therein were further sold in the market which was evident from the label pasted which read. "ICDB-II-MP Government supply - Not for sale."; that on Appeal the Commissioner (Appeals) also rejected the Appeal filed by the Revenue observing that the primary packing of medicines contained in the container was not changed and these were put together in their original packing in the box; further, the medicine could not be sold in the market in view of the specific marking 'Not for sale' and, therefore, the clarification issued by the Ministry of Finance under F. No. 102/1/79-CX. 3, dated 20-3-80 was applicable.

Learned Departmental Representative, further, submitted that Note 5 to Chapter 30 clearly provides that "conversion of powder into tablet or capsules, labelling or relabelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture;" that the price contract with the M.P. Laghu Udyog Nigam is for medicine kit as a whole and not for individual medicine; that the packing of medicines in printed corrugated boxes is essential packing without which medicine kit will not remain medicine kit and will not be acceptable to the purchaser and as it affects the marketability of the medicines kit; this treatment of packing of manufactured medicine and boughtout medicine comes within the purview of "adoption of any other treatment" as mentioned in Note 5 to Chapter 30 and accordingly this process is a deemed manufacture liable to Central Excise duty. He also mentioned that the decision in the case of Eupharma Laboratory Ltd. v. CCE, Bombay - 2002 (141) E.L.T. 136 (Tribunal), relied upon by the Commissioner (Appeals), is not applicable to the present matter as the facts are entirely different inasmuch as the dispute therein was about the classification whether under Heading 3003.20 or 3005.90.

3. On the other hand, Shri L.P. Asthana, learned Advocate submitted that the Note 5 to Chapter 30 does not apply to the facts of the present matter inasmuch as the medicine kit is not sold to the consumer which is prerequisite for applying the Note. He placed heavy reliance on the findings contained in the Adjudication Order of the Assistant Commissioner. He also relied upon the Boards' Circular No.102/1/79-CX3., dated 20-3-80 wherein it was clarified that mere fact of the presence of marking on the medicine kit with prescribed emblem, logogram of the State Government will not make the medicine liable to duty. Finally, he relied upon the decision in the case of Lupin Laboratories Ltd. v. CCE, Aurangabad - 2002 (139) E.L.T 366 (Tribunal) wherein it was held that since each of the product was marketable on its own, placing them altogether did not confer on them any attribute of the marketability that it did not possess earlier. It was simply a matter of convenience for the customer. "It is also relevant to note that four or three tablets were initially packed after their manufacture into combination packing and it was not so as it was first packed into separate packing and thereafter drawn out from that packing and put into combination packing."

4. We have considered the submissions of both the sides. It is not disputed by the Revenue that the medicine kit contained medicines manufactured by the respondents as well as boughtout medicines and was meant for M.P. Government and it was not for sale. The Adjudicating Authority has given his specific finding that neither the medicine kit nor the contained medicine is further sold in the market. This has also not been rebutted by the Revenue. Note 5 to Chapter 30 of the Tariff will be attracted only if either of the process mentioned therein is carried out by any person. In the present matter, it is neither conversion of powder into tablet or capsule nor there is any labelling or re-labelling of containers nor repacking from bulk packs to retail packs. We agree with the Adjudicating Authority that at the most, the part of Note, which can be attracted in the present matter, is "adoption of any other treatment to render the product marketable to the consumer". As the product is only given to the M.P. Laghu Udyog Nigam and is not for sale it cannot be claimed by the Revenue that the respondents have adopted a treatment to render the product marketable to the consumer. In absence of any of the processes mentioned in Note 5 not being carried out by the respondents, the mischief of Note 5 to Chapter 30 is not attracted in the present matter. Accordingly, the process undertaken by

the manufacturer will not amount to manufacture.

Thus, the Appeal filed by the Revenue is rejected.

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