

Cce Vs. Syncom Formulation (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-23-2002

Reported in : (2003)(85)ECC55

Judge : S T G.R., P Bajaj

Appellant : Cce

Respondent : Syncom Formulation (i) Ltd.

Judgement :

1. Revenue has filed these eight appeals on the ground that the Commissioner (Appeals) was not correct in setting aside the penalty by holding that the respondents had not kept back any information and nothing was suppressed from the Department. Since the issue in all the eight appeals is the same, they were heard together and are being disposed of by this common order.

2. The facts of the case in brief are that the respondents herein are engaged in the manufacture of various type of pharmaceutical products namely P&P Medicaments and other medicaments. During the scrutiny of the declaration filed by the respondent herein, Departmental Authorities observed that the respondent had classified certain medicaments under Chapter sub-heading 3003.39 attracting Central Excise Duty @ 8%. It was alleged that as per Chapter Note 2(ii) of Chapter 30 for the purpose of heading No. 30.03 'Patent or proprietary medicaments' means any drugs or medicinal preparations, in whatever form, for use in the internal or external treatment of or for the prevention of ailments in human being or

animals which bears either on itself or on its container or both a name which is not specified in a monograph in a pharmacopoeia, formulary or other publications. A SCN was accordingly issued to the appellants asking them to explain as to why the goods should not be classified under Chapter sub-heading 3003.10 attracting Central Excise Duty @ 15% as against Central Excise Duty @ 8% paid and why penalty should not be imposed. Ld. Dy.

Commissioner while adjudicating the case held that the goods will be classifiable under Chapter sub-heading 3003.10 attracting Central Excise Duty @ 15% and confirmed demand of duty of Central Excise and imposed penalties. Similar duty was demanded and penalties imposed for different periods. When the appellants filed appeals before the Ld.

Commissioner (Appeals), the Ld. Commissioner observed.

"Thus, the appellants had classified the product under sub-heading No. 3003.20, the Department had proposed to classify the same under sub-heading 3003.10. The appellants had not kept back any information, nothing was suppressed from the Department and there cannot be any charge of misdeclaration and therefore, in the above, the finding of the adjudicating authority for imposition of penalties are not sustainable. The impugned orders are modified to the above extent. The appeals are disposed of accordingly".

3. Arguing the case for Revenue Shri R.D. Negi, Ld. DR submits that the Commissioner was not correct in setting aside the penalty inasmuch as the respondent herein intentionally did not declare as to which pharmacopeia or publication these products are classifiable under sub-heading 3003.20. He submits that since the medicines were not manufactured as per monogram in pharmacopeia, the same are classifiable as Patent or proprietary medicines chargeable to duty under chapter heading 3003.10 of the Schedule to the Central Excise Tariff Act, 85.

It was submitted by the Ld. DR that though the Ld. Commissioner (Appeals) has upheld the order of classification of the adjudicating authority which implicitly admitted the fact that was mis-declaration on the part of the respondents herein

and therefore, penalty would have been confirmed. He referred to the judgment of the Apex Court in the case *Indo-China Ship Navigation v. Jasjit Singh*, 1983 (13) ELT 13 (SC).

He also referred to the judgment of the Apex Court in the case of *Jaishri Engg. v. CCE*, 1989 (21) ECC 116 (SC): 1989 (40) ELT 214 and submitted that the penalty can be imposed in the case of mis-declaration or wrong statements. He submitted that in fiscal matters mens rea needed not to be established. In support of his contention he cited another decision of the Apex Court in the case of *Gujarat Travancore Agency v. CCE*, 1989 (42) ELT 950. Some more decisions in support of his contention were cited by the Ld. DR. Ld.

DR, therefore, prayed that the appeals may be allowed.

5. We have heard Ld. DR. We have perused the evidence on record. We have also perused the various case law cited by the Ld. DR. We note in the instant case that there was dispute in classification matters. It is well settled in law that whenever there is dispute in classification matters, penalty was not warranted inasmuch as the difference of opinion may be genuine. The cases cited by the Ld. DR in support of imposition of penalty on the ground that there was mis-declaration the facts in those cases are different from the present case. The present case is a simple case of classification. If the dispute was settled against the assessee then the appropriate course would be only demand of duty and not imposition of penalty as it was a matter of difference of opinion on the question of classification of goods. In the circumstance, we do not see any reason to interfere with the impugned order. The impugned order is, therefore, upheld and the eight appeals are rejected.

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