

Commissioner of Central Excise Vs. Ark Laboratories

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-03-2002

Reported in : (2005)(180)ELT164Tri(Mum.)bai

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Ark Laboratories

Judgement :

1. This is an appeal at the instance of the Revenue challenging the order passed by the Commissioner of Central Excise (Appeals) vide order dated 4-11-1996.

2. The respondent is manufacturing products, namely Triben, Triben-B and Triben Plus classified under sub-heading 3003.10 of the Schedule to the Central Excise Tariff Act 1985. The issue arising in this appeal is whether they are entitled to the benefit due to small scale industry under Notification No. 1/93, dated 28-2-1993. The department took the view that the products were manufactured under the brand name of M/s.

Jenburkt Pharmaceuticals. The assessee is not entitled to the benefit of Notification No. 1/93. In coming to the above conclusion, reliance was placed by the adjudicating authority on the logo of M/s. Jenburkt Pharmaceuticals on the printed cartons containing the product. The adjudicating authority imposed a penalty of Rs. 50,000/- on the assessee. Aggrieved by the above, the assessee

filed an appeal before the Commissioner (Appeals) who reversed the order of the adjudicating authority. The order of the Commissioner (Appeals) is under challenge before this Tribunal.

3. The learned DR contended that the brand name/trade name 'JENBURKT' of M/s. Jenburkt Pharmaceuticals Ltd. was affixed on the product packing and it is also mentioned that M/s. Jenburkt Pharmaceuticals are marketing agents. It, therefore, clearly establishes connection in the course of trade between the products Triben, Triben-B and Triben Plus and M/s. Jenburkt Pharmaceuticals. Therefore, the Commissioner (Appeals) has committed an error in holding that the assessee is entitled to benefit of Notification No. 1/93. On the other hand, the learned counsel for the respondent placed reliance on a decision of the High Court of Bombay in DCI Pharmaceuticals Pvt. Ltd. v. Supdt. of Central Excise (Div.), Panaji, 2000 (115) E.L.T. 45 and contended that merely because the goods are distributed by some other company whose name and logo are also printed on the cartons it cannot be said that they are identified with user of the brand name. Therefore, according to the respondent the order passed by the Commissioner (Appeals) is not liable to be interfered with.

4. We have examined the product packing which is produced before us. It is seen that the brand name of the product has been given as Triben, Triben-B and Triben Plus. It is true that the logo of Jenburkt is also printed on the cartons, but it is also printed that the product is marketed by Jenburkt. The manner in which the above printing is made on the cartons would not in any way show that the product is being identified under the brand name of Jenburkt. There is no evidence adduced by the Revenue that the marketing agency Jenburkt is also producing the same combination or any other product in the brand name of the assessee. We are of the view that the ratio of the decision of the Bombay High Court is directly applicable in the present case. We find no reason to interfere with the impugned order. The appeal is dismissed.