

**White-way Products Vs. Commissioner of C. Ex.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Dec-13-2002

**Reported in :** (2003)(153)ELT583Tri(Mum.)bai

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

**Appellant :** White-way Products

**Respondent :** Commissioner of C. Ex.

**Judgement :**

1. The present appellant M/s. White-Way Products, Vadodara is the manufacturer of pharmaceutical products. They have their own factory and manufacture pharmaceutical products therein. M/s. AIMCO Pharmaceutical Manufacturing Co. is a loan licensee. They have no factory of their own. They produce certain pharmaceutical products in the factory of M/s. White-Way Products. Duty demand of about Rs. 52,000/- has been raised in regard to this production against M/s.

White-Way Products on the ground that M/s. Aimco Pharmaceutical is not eligible for exemption under Notification No. 1/93 in respect of their own goods. It has been held that to be eligible for the exemption a manufacturer has to have his own manufacturing unit.

2. The appellant's challenge is on two grounds. The first is that the proceedings before the lower authorities were pursuant to a direction by the Hon'ble Gujarat High Court that the issue be decided in the light of the ruling contained in that High

Courts' decision in the case of Indica Laboratories Pvt. Ltd. v. Union of India reported in 1990 (50) E.L.T. 210 (Guj.). The appellants contend that it was not open to the original authority or the present appellate authority to take a view that, to be eligible for the exemption, a manufacturer has to have his own unit, inasmuch as such a view would not be in conformity with the dictum contained in the judgment in the case of M/s. Indica Laboratories, The second contention is that the impugned proceedings are in terms of remand Order No. CS-64/BRD/95, dated 18th July, 1995 of Commissioner (Appeals) wherein the Commissioner had held that in terms of the Hon'ble Gujarat High Court decision in M/s, Indica Laboratories case it is not a requirement that a loan licensee should have his own manufacturing unit for the purpose of availing himself of small scale exemption under Central Excise law (Notification No. 175/86). It is the appellant's submission that since the Commissioner (Appeals) had remanded the case after taking a view on the issue of requirement regarding manufacturing unit that issue remains settled and in the remand proceedings a contrary decision could not have been taken.

3. We have heard the learned SDR who reiterated that in the absence of a factory to manufacture and a central excise licence, a person cannot claim to be a manufacturer entitled to benefits under Central Excise law.

4. The dispute as to whether a loan licensee is entitled to small scale exemption under Central Excise law had come up before the Gujarat High Court for decision in the context of exemption under Notification No.175/86, dated 1-3-86. The present Notification 1/93 is successor to Notification No. 175/86. After considering the legal position of loan licensees under the Drugs and Cosmetics Rules, 1945 and Central Excise Act and Rules, 1944 the Hon'ble High Court ruled (M/s. Indica Laboratories Limited) that loan licensees who have no factory of their own for manufacture of pharmaceutical products are also covered by Notification No. 175/86. While remanding the present dispute Commissioner (Appeals) also had placed this interpretation on the judgment of Hon'ble Gujarat High Court (Order No. CS-64/BRD/95, dated 18th July, 95). In these circumstances, we are in full agreement with the appellant that the demand confirmed in the impugned order is not maintainable. The appeal is accordingly, allowed with consequential relief to

the appellant.

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