Mpi Ethicals Pvt. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-07-2003

Judge : S T Gowri, G Srinivasan

Appellant : Mpi Ethicals Pvt. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The application is for waiver of deposit of duty of Rs. 7,45,819/- and penalty of Rs. 50,000/-. The duty and penalty have been demanded and imposed on the ground that the value of the physician samples of medicaments that the applicant manufactured and cleared for free distribution did not include the cost of their packing.

2. Counsel for the applicant explains that the value of physician samples has been determined, proportionate to the quantity, on the value of the same medicament which was cleared for sale. Thus, Astharid tablets for sale, in packing of 100, consisting of 10 strips containing 10 tablets each were valued at Rs. 66.24. The same tablet, when sold in a packing of four, in a catch cover has been valued proportionately to Rs. 2.24. He contends therefore that the cost of packing has been included and relies upon a certificate, issued by a chartered accountant, confirming this. He further contends that the extended period of limitation which covers the demand except for Rs. 53,000/- or so will not be available, since the declaration stated that the cost of packing is included.

3. The departmental representative contends that the packing of the physician samples is different from the cost of packing of the commercially sold product and it has not been shown that in the proportionate value, the provision for this difference has been made.

He further contends that since the declaration under classification relating to cost of packing did not deal with this aspect, there has been suppression of facts and misdeclaration by the assessee.

4. The facts are debatable. No doubt, as in the example that we have cited above, the cost of the physical sample does include the proportionate cost of the packing of the same product that was sold.The packing of the sold product consisted, we are told, of strips, which were kept in a box. The Physical samples are also in strips kept in pouch or catch cover. Therefore, except with regard to the outer container, the proportionate cost of packing prima facie would be included in the physical samples. it therefore appears to us that the difference price on account of the packing will not be of great significance. The department had also not cited any material in the notice in support of its contention that the cost of packing is not included. We are unable to place much emphasise on the certificate by the chartered accountant which merely makes a bare statement without a single document that is relied upon. Taking all these aspects into account, we direct deposit by the appellant of Rs. 1 lakh towards the duty and penalty within a month from the receipt of this order upon which we waive deposit of the remaining duty and penalty.