Rpg Life Sciences Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-25-2003

Judge : J Balasundaram, S T S.S.

Appellant : Rpg Life Sciences Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. For reason recorded below, we waive the predeposit of penalty of Rs. 1,50,000/- imposed upon the appellants herein and proceed to dispose of the appeal itself with the consent of both sides, since the issue lies within a very narrow compass.

2. Penalty has been imposed on the appellants herein who are manufacturers of Pesticides (Formulation Grade) on the ground that they failed to determine the duty liability correctly as there was a higher price charged and collected by their depots for the sale of their products during the period March 1994 to June 1996. The penalty has been imposed under the provisions of Section 11AC of the Central Excise Act read with Rule 173Q(1) of the Central Excise Rules.

3. The challenge before the Tribunal is both to the confirmation of duty demand of Rs. 6,76,247/- as well as the penalty of equal amount.

As far as the penalty is concerned the submission is that consolidated combined penalty under both the provisions is not sustainable. In this connection the appellants relied upon the Tribunal decision in the case of Agarwal Pharmaceuticals v. CCE [2002 (50) RLT 667 CEGAT -- Del.)].

Regarding the duty demand. It is their submission that the demand is barred by limitation as show cause notice demanding duty is dt.

8.12.1998 covering the period March 1994 to June 1996 and the proviso to Section 11A of the Act, is not applicable, as the appellants did not suppress any facts nor did they mis-declare any facts with intent to evade payment of duty. On merits the challenge to duty demand is that the judgment of the Supreme Court in the case of MRF Ltd. v. Collector of Central Excise, Madras [1997 (92) ELT 309 (S.C.)], holding that subsequent fluctuation in the price of the commodity can have no relevance whatsoever so far as the liability to pay excise duty is concerned, is clearly in their favour. Demand of duty is therefore not payable by them.

4. On hearing both sides and noting that the penalty has been imposed under the provisions of Rule 173Q read with Section 11AC which has been held to be un sustainable by various decision of the Tribunal's, we set aside the impugned order and remand the case for fresh decision both on the duty aspect as well as to whether the appellants are liable to any penalty under separate provisions of law, after holding that penalty under Section 11AC has been relied and held to be unsustainable by the Commissioner.

6. We leave all issues open for determination by the Jurisdictional adjudicating authority.