Comteck Laboratories Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-28-2003

Reported in : (2003)(156)ELT966Tri(Mum.)bai

Judge : S T Gowri, A Wadhwa

Appellant : Comteck Laboratories

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant was engaged inter alia in the manufacture of a solution of sodium chloride. The solution was packed in plastic containers to be used as a drip. It claimed classification of the product in sub-heading 20 of Heading 30.03 of the tariff as an unpatented medicament. The notice issued by the department proposed to classify it in subheading 10 as a patented medicament on the ground that it bore upon it a symbol, comprising an octagon containing the word COMTECK. The Assistant Commissioner confirmed the proposal in the notice. On appeal from the order, the Commissioner (Appeals) remanded the matter to the adjudicating authority to verify the contention of the assessee that the container of the product did not in fact bear any such symbol. The Assistant Commissioner passed orders in which he said that the control samples of the product, which were kept by the assessee in compliance with the requirement of the rules under the Drugs & Cosmetics Act, 1940 did not, on inspection by him, bear any such symbol as alleged. He therefore vacated the notices. The department appealed this common order to the Commissioner (Appeals).

The ground in the appeal was that the container of the product bore on it the words to the effect that it was packed in Miniflex containers and the presence of the words constituted use of a brand name as specified in Note 2(ii) to Chapter 30. The assessee contended before the Commissioner (Appeals) that a new case was being made out and that this was not the allegation raised in the notice. The Commissioner (Appeals) did not accept this contention. He said that the basic ground on which the product was sought to be reclassified, that it bore upon it a brand name, continued to be the same. Therefore, after considering the other submissions of the assessee, he dismissed the appeal. Hence, this appeal.

2. We do not find it possible to agree with the Commissioner (Appeals) when he says that because the ground in law remained the same, both at the time of issue of the notice and before him, the fact that there has been a drastic revision upon the charges against the assessee is immaterial. When an assessee is called upon to answer the charge relating to'short levy of duty or in any of this kind, he must be furnished the provision of law and the facts of the case upon which it had been alleged that the law has been contravened. Thus, a notice cannot be issued merely alleging contravention of the law without indicating specifically the manner in which the law has been contravened. Such indication would necessarily require narration of the facts. Merely because the classification is proposed to be the same and the broad ground in the law is the same, it does not follow that a completely fresh set of facts even if based on the same ground in law, can be brought in at the appellate stage. The assessee has been asked to answer a case before the Commissioner (Appeals) which was not set up earlier and this course of action is not permissible. It will thus follow that the appeal by the department was not maintainable.