

Macleaods Pharmaceuticals Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2003

Judge : J Balasundaram, S T C.

Appellant : Macleaods Pharmaceuticals Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides for some time on the application for waiver of pre-deposit of balance duty of Rs. 7,47,737/- (out of the demand of Rs. 9,36,148/-, Rs. 1,88,411.99 already stands paid), we find that it is possible to decide the appeal itself and hence proceed to do so with the consent of both sides.

2. The appellants are manufacturers of medicaments falling under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985.

During the period March 1995 to June 1997, the Central Excise department registered a case against them for clandestine removal and for undervaluation, and issued a show cause notice on 5.12.1997 raising a duty demand of Rs. 3,19,75,662.03. The appellants opted for the Kar Vivad Samadhan Scheme and paid an amount of Rs. 1,20,36,224/- as directed. A show cause notice dated 3.10.2001 came to be issued alleging that the appellants had contravened the provisions of Section 4(1)(a) read with Rule 173C and 173F of the Central Excise Rules inasmuch as they cleared medicaments without filing price list/price declaration for the product, thereby suppressing the facts about the clearance

value through their distributors as well as the fact of clearances at higher value through their clearing and forwarding agents. The notice raised a demand of Rs. 9,36,148/- for the period 20.9.1996 to 6.8.1997, and also proposed imposition of penalty. The Additional Commissioner confirmed the demand and also imposed penalty equal to duty, rejecting the contention of the assesseees that the period covered under the show cause notice was already covered under the show cause notice dated 5.12.1997 which was settled under the Kar Vivad Samadhan Scheme. The Commissioner (Appeals) passed orders on the application filed by the appellants in terms of Section 35F of the Central Excise Act, 1944, directing payment of the balance duty of Rs. 7,47,737/- along with the entire penalty and for failure to comply with this order, he dismissed the appeal of the assesseees vide the impugned order; hence this appeal.

3. On hearing both sides, we are of the view that the plea of the appellants that the duty demand is covered by the settlement under the Kar Vivad Samadhan Scheme under which the demand raised under the earlier show cause notice was settled, should have been considered by the Commissioner (Appeals) and that he ought not to have dismissed the appeal at the threshold stage on the ground of non-compliance. We therefore set aside the impugned order and remand the case to the Commissioner (Appeals) for fresh decision on the above plea along with the other pleas on limitation etc., after extending a reasonable opportunity to the appellants of being heard and substantiating their defence, without insisting on any pre-deposit.

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