

Ranbaxy Laboratories Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1987

Reported in : (1987)(12)LC323Tri(Delhi)

Judge : Author: S Jha

Appellant : Ranbaxy Laboratories

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. D.N. Mehta

Judgement :

1. The appellants in respect of their product Chloramphenicol Eye Ointment claimed classification under Tariff Item 68 of the Central Excise Tariff read with exemption notification No. 55/75-CE dated 1.3.1975 as amended by 62/78 dated 1.3.1978. The Assistant Collector of Central Excise, Bombay by his order dated 14.2.1980 after scrutiny of the labels held that the product fell under T.I. 14E as Patent & Proprietary Medicine. It appears that in the meanwhile before classification list was approved the product was exported to foreign countries. Consequent upon this classification the Superintendent of Central Excise, Range II Division 'K' issued show cause cum demand notice against actual manufacturers M/s. Pharma Medico (I) Private Ltd., Bombay. Adverse approval of the classification list under T.I.14E was challenged by the appellants before the Collector of Central Excise (Appeals) Bombay. The Collector of Central Excise (Appeals) Bombay by his order dated 22.4 1983 did not go into the question of

classification because, according to him, at the personal hearing dated 6.4.1983 the appellants' representative Shri R. Anantharaman did not contest the classification of the product but only urged that since the entire production was exported the appellants should not be called upon to pay duty. The Collector of Central Excise (Appeals) held that it was not necessary to go into the question of the appellants having exported entire production of the product to foreign countries as, according to him, the order in challenge before him went only into the question of classification. He therefore rejected the appeal and left the matter of export open to be agitated before the Assistant Collector.

2. At the hearing of the appeal Shri D.N. Mehta, learned Counsel for the appellants, has seriously challenged the observation of the Collector (Appeals) that the appellants had given up or that they did not contest the question of classification before the Collector (Appeals). He urged that in the grounds of appeal before the Collector (Appeals) the appellants had specifically raised the question and the plea was never given up. The plea is also raised before the Tribunal.

Besides, before not accepting the classification proposed by the appellants under T.I. 68 read with notification supra and altering it to T.I. 14E, the Assistant Collector had not afforded any opportunity of hearing or show cause notice to the appellants. This point was also raised before the Collector (Appeals) but he did not go into this question. Questioned by the Bench Shri A.K. Rajhans, JDR representing the respondent stated that he would have no objection if the matter were remanded to the Assistant Collector for de novo deciding the question of classification after complying with the principles of natural justice.

3. On going through the order of the Assistant Collector it appears to us that before the Assistant Collector adversely altered the classification proposed by the appellant no opportunity of hearing was granted to the appellants. While we would normally be reluctant in accepting a party's contention that an order passed by a quasi-judicial authority does not truly and correctly reflect the proceedings, in the instant case having regard to the submissions of Shri Mehta that the plea was raised by the appellants before the Assistant Collector and the Collector (Appeals),

it does appear to us that the appellants had not given up the claim of classification as is made out in the order of the Collector (Appeals). Besides, as already pointed out, the JDR has no objection to the matter being remanded for de novo consideration for proper classification of the product. We therefore set aside the impugned order and remand the matter for de novo consideration of classification to the Assistant Collector of Central Excise having jurisdiction in the matter.

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