Commissioner of Central Excise Vs. Cipla Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-16-2003

Reported in : (2004)(166)ELT421Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Commissioner of Central Excise

Respondent : Cipla Ltd.

Judgement :

1. Appeal No. E/2206/97 has been filed by the Department against order-in-appeal No. GS/167/B-III/07 dtd. 24-6-1997. In the said order-in-appeal, the Commissioner (Appeals) has directed the Assistant Commissioner to re-examine the refund claim and consider the same if otherwise admissible. It is seen that the said order has been implemented by the Assistant Commissioner and he has rejected the refund claim amounting to Rs. 23,98,052/- by his order dtd. 27-10-1997.

On subsequent appeal, the successor Commissioner (Appeals), has upheld the rejection in his order dtd. 12-3-1999 and hence M/s. Cipla Ltd. have filed Appeal No. E/2152/99 before us.

2. We have heard both sides on both appeals. It is the case of the appellants M/s. Cipla Ltd. that the impugned goods were once cleared on payment of duty and then returned. These were defoiled and then refoiled and again cleared on payment of duty. Their claim is for refund of the duty which has been paid twice.

They contend that the activity undertaken amounts to manufacture and that in any case it is also covered under Rule 173L even if the same does not amount to manufacture. They further contend that if the processes do not amount to manufacture, then duty cannot be collected the second time. They also cite the following case laws in support of their claim :-Rubber Inds. (India) v. Collectorof C. Ex. Bombay-I -1996 (83) E.L.T. 116 (Tribunal)CCE, Bombay-Ill v. Guest Keen Williams Ltd. - 1996 (63) ECR 330 (Tribunal) These case laws allow refund of duty paid twice on goods returned in view of Rule 173L and Section 11B. We are of the view that the case of the appellants is squarely covered by these decisions and hence we are of the view that the appellants are entitled to the refund claimed by them.

3. In view of our finding as above, we set aside the impugned order in appeal dtd. 12-3-1999 and reject the Department's appeal but allow the appeal of M/s. Cipla Ltd. with consequential benefit. Our order rejecting appeal No. E/2206/97 and allowing appeal No. E/2152/99 was announced in the court on the date of hearing on 28-10-2002.