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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-2003

Reported in : (2004)(92)ECC750

Judge : A T V.K., P Chacko

Appellant : Ranbaxy Laboratories Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this Appeal filed by M/s. Ranbaxy Lab. Ltd. the issue involved is whether the process undertaken by the appellants on duty paid bulk drugs received back by them amounts to manufacture in terms of provisions of Note 11 to Chapter 29 of the Schedule to the Central Excise Tariff Act.

2. Shri B.L. Narsimhan, learned Advocate, submitted that the Commissioner under the impugned Order, has confirmed the demand of Central Excise duty amounting to Rs. 22,02,829; that out of the total amount of duty confirmed, they are not challenging confirmation of demand of duty amounting to Rs. 7.2 lakhs relating to Lovastatin.

Learned Advocate, further, submitted that the Appellants manufacture various bulk drugs which are cleared by them on payment of duty to their various units. They are also selling the bulk drugs to various other drugs medicine manufacturer; that whenever the bulk drug is found to be defective in nature, the same is returned

back to their factory either under the provisions of Rule 173H or under Rule 57F(3) of the Central Excise Rules, 1944; that after taking the process of repairing which is physical in the nature of re-blending and processes like milling, sifting, washing etc, the reprocessed bulk drugs are packed and supplied back to the units from where the defective bulk drugs were received; that they also do not take Modvat credit of the duty on the bulk drugs received by them; that they had received the duty paid bulk drugs from their Mohali factory for repair/reprocessing for which they had filed D 3 intimation; that they had removed the bulk drug after reprocessing to their Mohali unit without payment of excise duty giving the reference of the invoices under which the duty was paid at the initial clearance of the drug; that the Commissioner has confirmed the demand of duty of Rs. 13,94,316 on the ground that the Batch number from all the consignments sent back is different from batch of the consignment received from Mohali factory and therefore impugned goods had been manufactured which attract levy of Central Excise duty. The learned Advocate, contended that every time when the drug is reprocessed in terms of Drugs and Cosmetics Act and Rules made thereunder, the batch Number of the medicine would necessarily undergo a change and on this score alone, it cannot be said that fresh goods had been manufactured and supplied; that in their own case the Tribunal vide Final Order No. A-374/2003 NB(C) dated 9.7.03 has allowed their Appeal following the decision in the case of M/s. Pepsi Food Pvt. Ltd. Final Order No. 207/02-D dated 27.8.02; that the Appeal filed by the Revenue against the decision in Pepsi Food case has been dismissed by the Supreme Court on 10.2.03 after condoning the delay. He also has relied upon the decision in the case of Lincoln Parenterals Ltd. v.CCE, Ahmedabad-II, 2.2. Learned Advocate, further, mentioned that demand of duty of Rs. 88,513 has been confirmed in respect of consignment of Histic Tablets received back as the wrong MRP was printed on the tablets; that after printings the correct MRP, they had cleared the said tablet without payment of the Central Excise duty; that according to Revenue the process involved is of repacking, relabelling and reprinting of MRP, which amounts to manufacture in terms of Note 5 to Chapter 30 of the Tariff, that the process of reprinting the MRP does not involve any repacking from bulk packs to retail packs and as such the provision of Note 5 to Chapter 30 does not apply.

3. Countering the arguments, Shri V. Valte, learned Senior Departmental Representative, submitted that after the bulk drug was received back by them, it was reprocessed as well as lot Nos. were changed and as such process amounts to manufacture in terms of Note 11 to Chapter 29. He relied upon the decision in the case of Bharat Cooking Gas and Coal Ltd. v. CCE Patna, 4. We have considered the submissions of both the sides. As the Appellants have not disputed the duty liability of Rs. 7.2 lakhs in respect of quantity of 10 kg. of Lovastatin received by them from Tuansa, the demand of duty is upheld. In respect of Strips of Histic tablet received back for printing the correct MRP the provisions of Note 5 to Chapter 30 will not be applicable as this process cannot be regarded as process of labelling or relabelling of containers intended for consumers and repacking from bulk pack to retail pack or adopting of any treatment to render the goods marketable to the consumer. This was the view held by the Tribunal in Lincoln Parenterals Ltd. where the medicament earlier cleared on payment of duty were brought back for changing the labels as the labels fixed thereon mentioned wrong potency and the Tribunal held that such change of labelling does not amount to manufacture in terms of Note 5 to Chapter 30. We, therefore, set aside the demand of duty amounting to Rs. 88,513. Regarding the demand of duty in respect of Pen-G Acylase that was received back from their Mohali factory for repairing/reconditioning, the Tribunal has already held in the Appellants' own case vide Final Order No. A/374/2003 NB (C) dated 9.7.03 that the process of milling, blending, sifting washing etc. does not amount to manufacture. Following the ratio of the said decision, we allow the Appeal on this account also. The Appeal is disposed of in the above terms.

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