Searle (India) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2003

Judge : K Usha, N T C.N.B.

Appellant : Searle (India) Ltd.

Respondent : Cce

Judgement :

1. The issue raised in this appeal relates to the interpretation of the provisions contained under Notification No. 245/83 dated 13.9.83.

Explanation in Clause (1) of the above notification reads as follows:- "In calculating the value of the said medicines the amount of excise duty payable, if any, shall be deducted before allowing the discount from the retail price referred to in the said price list." According to the appellant, the excise duty referred in the explanation should be taken as excise duty as well as special excise duty. In support of its contention reliance is placed on the decision of this Tribunal in Ranbaxy Laboratories Ltd. v. CCE Indore 1999(81) ECR 485.

It is seen that the ratio of the above decision has been subsequently followed by this Tribunal in its further decision in Medley Pharmaceuticals Pvt. Ltd v. Commissioner of Central Excise & Customs 2000(120) ELT 368(Tribunal) and Alembic Chemical Works Co. Ltd. v.Commr. Of Customs & Central Excise, Vadodara 2001(127) ELT 259(Tri.-Mum.).

2. The learned DR would contend relying on the decision of the Supreme Court in Union of India v. Modi Rubber Ltd. 1986(25) ECR 849 that unless specific reference is made to special excise duty, deduction could be only of the basic excise duty. We find that the same contention had been considered by this Tribunal and rejected in Ranbaxy Laboratories Ltd. v. CCE Indore. The decision of the Supreme Court in Modi Rubber Ltd. was also considered and it was held that the ratio laid down in that case cannot be made applicable to interpretation of the Notification No. 245/83.Ranbaxy Laboratories Ltd. v. CCE Indore. In the light of the above, we set aside the order impugned and allow the appeal.