Commissioner of Central Excise Vs. N.R. Jet Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-14-2004

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : N.R. Jet Enterprises

Judgement :

1. Both the appeals involve identical issues and are hence heard together and disposed of by this common order.

2. As the issue in dispute, namely, classification of Unsterilized Absorbable Sutures (Catgut), hereinafter referred to as UAS) stands settled against the manufacturers by Tribunal's order in the case of Johnson and Johnson Ltd. v. CCE, Mumbai reported in 2003 (154) ELT 729, holding that the product falls for classification under CETA Chapter heading 42.01 as contended by the Revenue, and not under Chapter heading 05.10 as claimed by the assessees, we waive the pre-deposit of duty, of Rs. 1,12,76,346/- confirmed on the product manufactured by M/s. Johnson & Johnson Limited and cleared during the period 04/10/1999 to 18/12/2000, and proceed to hear and decide their appeal along with appeal No. E/1431/2001 filed by the Revenue.

4. In the case of Johnson & Johnson Limited cited supra the Tribunal has held that Unsterilized Absorbable Sutures (Cafgut) are classifiable under Chapter heading 42.01 as articles of animal gut and not under Chapter heading 05.01 as a product

of animal origin. Hence me Commissioner (Appeals)'s finding in the order impugned in the Revenue's appeal that the product is classifiable under Chapter heading 05.01 is set aside. However, the prayer of the Revenue for restoration of penalty imposed by me adjudicating authority (Assistant Commissioner) is disallowed as the classification of the product involved interpretation of tariff entries in which situation it has been held that penalty is not warranted. As for the appeal of Johnson & Johnson Limited we uphold the demand of duty under Chapter 42.01. The issue of availability of modvat credit to the appellants is remanded to the adjudicating authority for examination, in the light of the ratio of the Tribunal's order in their own case reported in 2003 (154) ELT 729.

The penalty imposed on M/s. Johnson & Johnson Limited is set aside in the light of what has been set out earlier on the penalty aspect.