

Commissioner of Central Excise Vs. Dabur India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-2004

Reported in : (2004)(167)ELT310TriDel

Judge : A T V.K., P Chacko

Appellant : Commissioner of Central Excise

Respondent : Dabur India Ltd.

Judgement :

1. In this appeal, filed by the Revenue, the issue involved is whether letter dated 28-2-2003 addressed to the respondents, M/s. Dabur India Ltd., is appealable order.

2. Ms. Charul Baranwal, learned S.D.R., submitted that M/s. Dabur India Ltd., manufacture Tamarind extract, which was classified by them under Chapter 20 of the Schedule to the Central Excise Tariff Act; that it was considered by the Department that the Tamarind extract is classifiable under sub-heading 1301.10 of the Tariff. The Joint Commissioner, under letter dated 28-2-2003, requested the respondents to calculate the duty for the period from 1999-2000 till date and deposit the same immediately; that the respondents debited the duty for the period from 1-4-99 to 18-3-2003 on 18-3-2003 and 21-3-2003; that, on the other hand, they filed an appeal against the said letter with the Commissioner (Appeals), who has treated the said letter as appealable order and has held that it is classifiable under Heading 20 as contended by the respondents; that the Commissioner

(Appeals) has also held that duty cannot be demanded without issuing any show cause notice or granting any personal hearing. The learned S.D.R., further, submitted that the letter dated 28-2-2003 was written to convey the observation of the Audit Party and the same was not an order demanding duty under any provisions of the Act or Rules. In fact, no duty was quantified in the said communication; that accordingly, the Commissioner did not have any jurisdiction to pass an order on merits.

3. Countering the arguments, Sh. B.L. Narasihman, learned Advocate, submitted that they had filed a representation with the Department, which has so far not been considered; that the classification cannot be changed and duty cannot be demanded without issuing the show cause notice and without passing a speaking order.

4. We have considered the submissions of both the sides. We agree with the learned S.D.R. that the communication dated 28-2-2003 is not an appealable order as it is simply a communication in which the respondents have been requested to pay the duty under Heading 13.01 instead of Chapter 20 in which they have classified the impugned orders. We, therefore, set aside the order passed by the Commissioner (Appeals). However, we direct the Revenue to decide the representation made by the respondents expeditiously and, if necessary, after giving an opportunity of hearing to them.

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