

intervet Laboratories Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-25-2004

Reported in : (2004)(93)ECC289

Judge : A Wadhwa, S T C.

Appellant : intervent Laboratories Ltd.

Respondent : Cce

Judgement :

1. The prayer is for dispensing with the condition of pre-deposit of duty amount of Rs. 9,73,205.65 confirmed for the period 1.11.1996 to July 2001 and of Rs. 31,450.85 confirmed for the period 1.8.2001 to 31.3.2002. The appellants have also been imposed with identical amount of personal penalties under Section 11 AC of the Act.

2. After hearing both sides duly represented by Shri Prakash Shah, learned advocate and Shri S.S. Bhagat, learned SDR, we find that the issue related to the classification of the appellants interim product, i.e. Aluminum Hydroxide Gel. Whereas the appellants have claimed the classification of the said product under Heading 30.02, Revenue has classified the same under Heading 2818.10. Shri Shah has challenged the impugned order on merits as also on the point of limitation. He has drawn our attention to the fact that during the relevant period they were filing the classification list claiming classification under Heading 3002.00. The Show Cause Notice for the period 1.11.96 to July 2001 was issued

only on 4.12.2001. As such, only a part of period is within limitation and the demand for the rest period is barred by limitation. He submits that the Commissioner has invoked the longer period of limitation by observing that prior to the period in question they were themselves paying the duty under the Heading 2818.10 and changed the classification with an intention to evade duty. However, the learned advocate has not pleaded any financial hardship.

3. Countering the argument, Shri S.S. Bhagat learned SDR. submits that the appellants are earlier clearing the goods in question under Heading 2818.10 with effect from 15.9.95 they changed the classification to 30.02. He submits that the Superintendent wrote number of letters to the appellants intimating that the correct classification is under Heading 2818.00 and the appellants should pay the duty under the said heading. He also draws our attention to the fact that for some period in between, the appellants has not maintained then record in respect of the product in question and it was only at the insistence of the department that the figures were provided to the department. In these circumstances he submits that the adjudicating authority correctly invoked the longer period of limitation.

4. After considering the submissions made by both the sides, we find that the issue of classification of the product is contentious and final decision can only be taken at the time of disposal of the appeal.

However, as regard to limitation, we find that the appellants had disclosed the entire facts to the revenue and as such they have prima facie case on the said point. However, a part of the demand is within the limitation period which according to the appellants is to the tune of around of Rs. 2.26 lakhs. We also note that the appellants are not in financial difficulty to deposit the said amount. Accordingly, we direct the appellants to deposit Rs. 3 lakh within a period of 4 weeks from today. Subject to above deposit, the pre-deposit of the balance amount of duty and entire amount of penalty shall stand waived, and recovery thereof stayed during the pendency of the appeal. The matter to come up for ascertaining compliance on 31st March, 2004.