Johnson and Johnson Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-24-2004

Judge : A Wadhwa, S T C.

Appellant : Johnson and Johnson Limited

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both the sides duly represented by Shri Rohan Shah, learned Advocate and Shri K.L Bablani, learned Jt.C.D.R., we find that the total amount of duty confirmed against the appellant is to the tune of Rs. 1,01,63,421/- (Rs. One Crore One Lakh Sixty Three Thousand Four Hundred Twenty One Only) with penalty of identical amount. The said amount has been confirmed by classifying the appellant's product Unsterlised Absorbable Catgut Sutures under the Heading 4201.90 by rejecting the appellant's claim of classifying the same under Chapter Heading 05.01.

2. Shri Rohan Shah, learned Advocate fairly agrees that the issue is no more res integra and stands decided by the earlier decision of the Tribunal in the appellants' own case reported in 2003 (154) E.L.T. 729 (Tri.-Mumbai). However, he submits that the Tribunal has also allowed them the modvat credit of duty paid on the inputs and used in the said final product. He draws our attention to another order No.C-II/647/WZB/2003 dtd. 25/03/2003 vide which it was held that whatever duty the appellants paid on the said product would be entitled to them as modvat credit in their another unit which is using the same product in the manufacture of

sterlised Absorbable Sutures. As such, he submits that even if the appellants pay the duty in question, they would be entitled to the credit of the same in their other unit. In respect of the penalty he submits that the Tribunal has already observed in the another decision In their own case bearing Order No. A/102 & 103/WZB/2004 dtd. 16/01/2004 that the dispute being the classification of the production in question was a bonafide dispute and involving interpretation of tariff entries in which situation penalty was not warranted and penalty has been set aside.

3. Countering the argument Shri K.L. Bablani, learned Jt.C.D.R. submits that the issue stand decided against the appellant by the above referred decision in which case the appellant has become liable to pay the duty in question. As regards the availability of modvat credit of the said duty in their another unit, he submits that first the appellant has to deposit the duty for claiming the credit which in any case is subject to the provision of modvat rule and is required to be decided by the appellant's Jurisdictional Appropriate Central Excise Officer.

4. After considering the submissions made by both sides, we find that the issue on the classification stands decided against the appellant by the decision referred supra. As such, the appellant is required to pay the duty confirmed by the authorities below. No financial hardship has been pleaded by them. However, we agree that the appellants are entitled to modvat credit of duty paid on the inputs used in the manufacture of the said product. However, when questioned, the appellant has not been able to tell us quantum of credit available to them. We also note that the same is available subject to production of duty paying documents. As regards the availability of confirmed demand of duty as modvat credit in their another unit, we find that is not the issue before us and in any case the appellants are first required to deposit the amount in question to take the credit of the same. Taking all this facts into account, we direct the appellants to deposit Rs. 1 Crore towards duty within a period of six weeks from today (period suggested by the learned advocate) and report compliance on 11/05/2004 and the appeal itself would be taken up for final disposal subject to compliance reported, on 03/06/2004. Inasmuch as the issue is prima facie decided by the earlier decision, the appeal be listed at the top.

The deposit of pre-deposit of penalty is waived and its recovery stayed during the pendency of the appeal.