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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2004

Judge : A T V.K., P Chacko

Appellant : Cc and Ce

Respondent : Endolabs Ltd.

Judgement :

1. The issue involved in these 3 appeals, filed by Revenue, is whether medicament namely Norfloxacin 100 mg Piroxicam Gel manufactured by Endolabs Ltd. are classifiable under Sub-heading 3003.20 of the Schedule to the Central Excise Tariff Act as confirmed by the Commissioner (Appeals) or are classifiable under Sub-heading 3003.10 of the Tariff.

2. Shri U. Raja Ram, learned DR, submitted that medicament in question are patent or proprietary medicament classifiable under Sub-heading 3003.10 as the same are not specified in Note 2(ii) to Chapter 30 of the Central Excise Tariff, that the Respondents have failed to discuss as to under which pharmacopoeia, formulary or publications they find a mention; that a perusal of Indian Pharmacopoeia 1996 refers Norfloxacin tablets which is usually in the strength of 200 mg., 400 mg. & 800 mg.

whereas the Respondents tablets are having strength of 100 mgs. and as such they are not covered by Indian Pharmacopoeia; that the container of the tablet mentions the description of the product as 'Norfloxacin 100 DT' which is name

altogether different from monogram appearing in LP., and therefore, these are patent or proprietary medicaments classifiable under Sub-heading 3003.10. He, further, submitted that the other product is also not classifiable under Sub-heading 3003.20 as the LP. refers only to "Piroxicam capsules" whereas the product manufactured by the Respondents is Piroxicam Gel.

3. The Respondents on the other hand have submitted in their written submissions forwarded by them under their letter dated 2.3.2004, that these products are manufactured out of single drug and marketed in the same name; that the inputs used are specified in I.P./B.P.; that the dispute has been raised only because the word 'Gel' is added after Piroxicam and word '100 DT' are added to Norfloxacin; that they are not branding these products by any other name nor these medicaments bear trade mark under the Trade & Merchandies Marks Act, such as symbol, monogram, label, signatures or invented word or any writing which is used in relation to that medicament for the purpose of indicating or so as to indicate a connection in the course of trade between the medicament and some person; that the word 'DT' denotes dispersible tablet and the word 'Gel' the fact that ointment is in Gel form. They have also mentioned that there is a provision in IP. that Drug Controller can permit strength of any medicine other than shown in LP. and such medicaments are as per specification of I.P.4. We have considered the submissions of both the sides. The Revenue is contending that the two medicaments manufactured by the Respondents are patent & proprietary medicament only on the ground that Norfloxacin manufactured by them is of different strength than mentioned in LP, 1996 with addition of word 'DT' and the product Piroxicam is in Gel form whereas LP. refers to it in capsule. Note 2(ii) to Chapter 30 of the Central Excise Tariff defines patent & proprietary medicament.

According to this Note, patent and proprietary medicament means any drug of medicinal preparation, in whatever form, for use in the internal or external treatment or for the prevention of ailment in human being or animals, which bears either on itself or on its containers or both a name which is not specified in a monograph, in a Pharmacopoeia, formulary or publications specified in the Note itself or which is a brand name. It has not been disputed by the Revenue that Indian Pharmacopoeia 1996 refers to Norfloxacin tablet and Piroxicam capsules.

These are the two names under which the medicaments manufactured by the Respondents are being marketed. The mere fact that they are making Norfloxacin tablet of 100 mg. strength and Piroxicam in the form of Gel will not make the medicament patent or proprietary medicament. The fact remains that the medicaments bears a name which is specified in a Pharmacopoeia. The Pharmacopoeia only refers to the usual strength of Norfloxacin tablet and it is not specified that these are only strength. Therefore, words '100 mg. DT' will not taken away the medicament from the purview of generic medicine. Similarly by marketing Piroxicam in the Gel form, the medicament does not become a proprietary medicament. Accordingly we find no reason to interfere with the impugned Order. Accordingly the appeal filed by the Revenue is rejected.

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