

Serene Labs Vs. C.C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-18-2004

Reported in : (2004)(170)ELT529Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Serene Labs

Respondent : C.C. Ex.

Judgement :

1. The appellants manufacture medicaments for various loan licencees /companies and filed claim for classification of the following product.

Classification List	Description of Product	Final approval	Logo of the	Loan No &
Date	granted	on	Licencee	on
product				

List	Description of Product	Final approval	Logo of the	LoanNo. &	Date	Granted	on
Licencee							on
Product							

95 dated Ampicillin Injection 28.6.95.

M/s.	Lyka	Lab	Ltd.,	5.12.94	BP	250
mg.Vial.						

95 dated Cloxacilina 500 mg. Vial 28.6.95.

M/s.	Lyka	Labs
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Ltd., _____

95 dated Ampicilina 500 mg.

28.6.95	M/s.	Lyka	Labs
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Ltd., _____

95	dated	Gentamicin	Injection	7.07.95	M/s.	Dolphin	Labs
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Ltd., _____

95 dated Cloxacillin Injection 28.11.95 M/s. Strides Pharm. Ltd., 24.3.95.

B.P.-500 mg.

Vial. _____

96 dated Gentamicin Injection B.P. 28.11.95 M/s. Dolphin Labs. 07.4.95.

80 mg/2ml Ampoules.

Ltd., 1/95-96 dated 1. Ampicillin 28.11.95.

M/s.	Lyka	Labs.	Ltd	Injection	BP
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500 _____

Under chapter 3003.10. These products for the reasons that they bore the logo of the loan licencees. The appellants availed Modvat Credit on the input & utilised the credit for clearance of the products. Revenue filed an appeal with CC Appeal praying.

i) Setting aside of approval of above 7 Classification Lists under 3003.10 & for approving the classification under 3003.20 as Generic Medicaments 2) The Commissioner (Appeals) found that the assessee had used a house mark "as brand name on the containers labels of the products which cannot be sold /marketed in the name of such logos or mark.

Since generic names have been printed on containers/labels & product sold in generic name the classification under 3003.20 was upheld. He found that the name Ampicillin in classification list no. 17/94-95 Cloxacillin in Classification no. 16/94-95 & Lysamierin main under 1/95-96 do not fall under generic medicaments as these names do not appear in prescribed books.

a) The placing of house mark/logo of the loan licensee alone will not call for a classification under 3003.10 as held by the SC in Astra Pharmaceuticals case (1995(75) ELT 214 SC). Relying on the same, the applicants plea to be covered by the chapter notification 2 (ii) of chapter 30 to cause classification under 3003.10 is not upheld. b) However, from the order of CCE (Appeals) impugned before us. it is found that the Ld CCE (Appeals) has concluded to the effect.

".... The products Amipczillal under CL.No. 17/94-95 cloxacillan classification under CC No. 16/94-95 & Lyramicin under chapter No. 1/95-96 do not fall under "Generic Medicaments" as this names do not appear in the prescribed hooks." Therefore these entities would be classified under 3003.10. Tt is not understood, why the entities in CL14/95-96 Ampicillin injection BP doxcelli vid in No. 16/94-95, Cloxacillin injection CL no.

21/94-95 would not be covered under heading 3003.10 by the CCE (Appeals). Since injection & vial are only indication of drug determining systems & cannot be terms covered by the chapter note 2 (ii) of chapter 30 to be as invented words, specific to such entity.

The matter therefore required to be remitted in the CCE (Appeals) to reconsider his finding and arrive at his decision after examining the labels/containers once again and bring on record the exact marks and then re-determine the classification after hearing the appellants.

c) As regards Gentamycin Injection the classification under 3003.20 is upheld.

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