Commissioner of Central Excise Vs. Warren Pharma Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/35811

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Warren Pharma Pvt. Ltd.

Judgement :
2. The Commissioner, after considering the material on record and arriving at a finding that the department has not taken into consideration 1) after issue of raw material, the product is manufactured after 2 to 3 weeks sometimes more, so the production is at times accounted for in next month.

2) The losses have not been taken into account, in support submitted, master formula, a very important document supposed to be kept by the manufacturer, as per schedule 'M' of the Drugs and Cosmetics Act. This master formula allows certain losses and various yields at different stages of manufacturers.

3) Manufacturing of pharmaceuticals are governed under the purview of drugs and cosmetics act.

4) Department have not taken into consideration the permissible overages added while calculating production quantities.

5) Certain products have a limit of active or main ingredient prescribed by various pharmacopoeias. This limi various product to product. The higher limit is allowed

to compensate possible loss of main ingredient during storage.

6) There is a rejection during the optical testing, as very important stage of manufacture which the department has not taken into consideration.

7) The entries are made in the manufacturing records, stocks cards, RG1 register, production memo are batchwise, and department has not taken into account the batchwise entries resulting into wrong calculation and huge difference between the actual production quantity and the theoretical yield based on simple mathematical calculations." and relying upon the judgment of the Supreme Court in (i) Oudh Sugar Mills 1978 (2) ELT J-172 (SC), (ii) AIR 1959 (SC) 539, (iii) 1981 (9) ELT J-184 (Mad) & (iv) 831 TR 508 (Ker), had come to a conclusion that the case made out by the Revenue of unaccounted production by basing calculation on a theoretical consumption of the main ingredients, in the medicament was not sustainable.

3. The ground taken by the Revenue in the appeal did not challenge these findings of the Commissioner that there is no evidence of clandestine removal and also that merely relying upon the calculations, no duty demands could be made on an assumption and presumption of clandestine manufacture and clearance thereof. In fact, on a perusal of the grounds taken in the present appeal, it is found that there is no challenge to the reasons for dropping the demands as arrived at by the Commissioner. We find no merits in the present appeal. The same is therefore dismissed.