

Capsulation Services Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-09-2004

Reported in : (2004)(173)ELT223Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Capsulation Services Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellant imported a consignment of Robenidine Hydrochloride and claimed assessment under CTH 2942 read with Notification No. 17/95 dt.

16.3.95, which provides for exemption from duty on Robenidine. The authorities below denied the exemption on the ground that the product imported is different from the one mentioned in Notification No. 17/95.

Before the lower appellate authority the appellant claimed that by Notification No. 161/95-CUS dt 29.11.95, the Central Government substituted the entry No. 29(Robenidine) with the entry Robenidine HCL.

The product Robenidine has been always imported as Robenidine HCL. The Government also has realized the mistake in the entry in Notification No. 17/95 and therefore found it necessary to substitute it. They pleaded that therefore their product is covered under Notification No.17/95 and is eligible for exemption.

2. The lower appellate authority held that a notification has to be read as a part of the statute and therefore there is no scope for extending a statutory benefit specifically provided for Robenidine to Robenidine HCL. He confirms the order of the lower appellate authority denying the exemption.

3. Heard both sides. We observe that notification No. 161/95 dt.

29.11.95, substituted the word Robenidine with Robenidine HCL. The appellants' contention that Robenidine has always been imported in its salt form is not controverted by the lower appellate authority. The fact that the Government found it necessary to substitute one for the other within a matter of seven months from the date of issue of Notification No. 17/95 shows that the Government always had intended to exempt Robenidine in its salt form as that is the only way it is traded. Further if the Government wanted to add another substance like Robenidine HCL to the already existing entry under the name of Robenidine, it would have done so by addition and not by substitution.

It is true that a notification has to be read strictly and no retrospectivity can be given unless it is specifically mentioned in the notification. But we are of the opinion that this is not a case where retrospectivity is being brought in. It is merely a case of interpretation of a word in Notification No. 17/95 in the light of substitution carried out in Notification No. 161/95. We, therefore, hold that the appellant is entitled for exemption of the notification for the product in question under Notification No. 17/95.

4. The appeal is allowed. The order of the Commissioner (Appeals) is set aside.

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