Apollo Pharmaceuticals Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2004

Reported in : (2004)(174)ELT129Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Apollo Pharmaceuticals

Respondent : Commissioner of Central Excise

Judgement :

1. Classification of four products manufactured by the appellants herein arises for determination in the present appeal:- 2. The assessee's claim for classification of the four products as P&P medicaments under CETA sub-heading 3003.10 has been rejected and the first three products have been classified by the authorities below under CETA sub-heading 2936.00 while the fourth product has been classified by the Revenue under CETA sub-heading 3507.00.

3. We find that for classification of three products under heading 29.36, the Commissioner (Appeals) relied upon the larger bench decision on classification of intermixtures of vitamins in the case of Ranbaxy Laboratories Ltd. v. CCE, New Delhi 1994 (72) ELT 197 wherein the Tribunal held classification of preparations such as pentaforte and famitone under CETA sub-heading 2936.00. This decision has been reversed by the apex court as seen from 2003 (152) ELT A92. We also find that classification of these products now stands settled by the Tribunal's decision in Softsule Ltd. v. CCE, Mumbai-II 2002 (146) ELT 418 wherein

classification of similar products which are intermixtures of vitamins has been upheld under CETA sub-heading 3003.10. The decision in the case of Torrent Pharmaceuticals Ltd. v. CCE, Ahmedabad 2004 (165) ELT 234 on classification of Tocofer capsules of vitamin E under CETA sub-heading 3003.10 is also relevant in this connection.

Following the ratio of these orders, we hold that Apofer Syrup, Apofer Capsules and Apohos Syrup fall for classification under CETA sub-heading 3003.10.

4. As regards Apozyme liquid, classification under heading 35.07 is ruled out in the light of the Tribunal's decision in the case of True Food Corporation v. CCE, Aurangabad 1999 (107) ELT 754 wherein Papain IP/BPC has been held to be a medicament under Chapter 30 and not under heading 35.07, in view of Note 1(b) to Chapter 35. We, therefore, hold that Apozyme liquid falls for classification as claimed by the appellants under CETA sub-heading 3003.10.