Emami Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Nov-08-2004

Reported in : (2005)(182)ELT375Tri(Kol.)kata

Judge : J T V.K., M Bohra

Appellant : Emami Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Heard Shri S.K. Bagaria, learned Senior Advocate along with Shri Partha Banerjee, learned Advocate, for the applicant/appellant-company.

2. The applicant/appellant-company is a manufacturer of Emami Talcum Powder and Emami Care Talc. One of the ingredients used in the manufacture of the above product is Ethyl Alcohol. The above products were covered by and liable to duty of excise under the provisions of Medicinal and Toilet Preparations (Excise Duties) Act, 1955, and they were also liable to pay State Excise Duty. In the two batches of goods referred to in the show cause notice, it was found in the Test Report that alcohol was not present. The case of the Revenue is based on the point that since the alcohol is not present in the final products, the Central Excise duty is payable on the above products in two batches.

3. Shri Bagaria, learned Sr. Advocate has submitted a Paper-Book on behalf of the applicant/appellant-company, which is taken on record. He has taken us to the

various parts of the Paper-Book submitted by him.

He also relies on this Tribunal's decision, vide Order No.A/774/KOL/2003, dated 16-9-2003 [2003 (158) E.L.T. 367 (Tri.)] in their own case. It was held by the Tribunal that failure of the samples in between can be on account of so many factors like long and inappropriate storage of the product so as to make the alcohol evaporated. It cannot be expected to change their manufacturing process in between different batches. It was also seen that applicant/appellant-company, during the relevant period, was paying the duty under the provisions of Medicinal and Toilet Preparations (Excise Duties) Act, 1955, which are more or less equivalent to the rate of duty as applicable to the Excise Act. The Tribunal had set aside the impugned Order and allowed the appeal inasmuch as the issue was covered by the earlier decision of the Tribunal in the applicants'/appellants' own case.

4. Heard Shri T.K. Kar, learned S.D.R. for the Revenue. He reiterates the Order of the Commissioner.

5. We have heard both sides. We find that on the similar facts, the Tribunal has already passed the Order as referred to above. We also find that in the case of SBL Pvt. Ltd. v. Commissioner of Central Excise, Jaipur reported in 2004 (172) E.L.T. 271 (Tri. - Del.), it has been held that final goods need not necessarily retain alcoholic contents. Relying upon the Hon'ble Supreme Court's decision in the case of Dabur India Ltd. v. State of Uttar Pradesh reported in 1990 (49) E.L.T. 3 (S.C.), it is also held that even if an item containing alcohol, or alcohol itself is used as ingredient in manufacture, such final goods would be liable to duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955, and not under Central Excise Act, 1944.

6. We find that the applicant/appellant-company has made out a case for total dispensation of the duty and penalty. We accordingly dispense with the duty and penalty till further Orders. The case is fixed for hearing on 27-1-2005.