Kappac Pharma Vs. Commissioner of Central Excise

Kappac Pharma Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/37918

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-01-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Kappac Pharma

Respondent : Commissioner of Central Excise

Judgement :

1. The above appeals involved common issue for determination and hence heard together and disposed off by this common order.

2. Appeal No. E/41/99 arises out of the order of Commissioner of Central Excise (Appeals) upholding modvat credit denial of Rs. 7,42,500/- availed by the appellants during the period September 1994 to June 1995; Appeal No. E/42/99 arises out of the Commissioner (Appeals) upholding the denial of modvat credit of Rs. 3,37,351/- availed during the period 17/12/94 to 22/07/1995; Appeal No. E/64/99 arises out of the said order upholding the denial of Rs. 3 0,030.90 availed during the period 17/12/1994 to 28/06/1995.

3. The credit has been denied on the ground that the products in dispute, Generic Medicaments were classifiable under CETA chapter sub-heading 3003.20 attracting Nil rate of duty and not under CETA chapter sub-heading 3003.10 as claimed by the assessees.

4. The appellants did not challenge the classification arrived at by the lower authorities and the only argument raised before us is that the extended period of limitation cannot be invoked against them, as they were (under) (sic) bonafide belief based upon the Tribunal's decision in the case of Ashtra Pharmaceuticals v. Collection 1987 (32) ELT 720, which was subsequently reversed by Supreme Court by judgement reported in 1995 (75) ELT 214. They submit that in these circumstances, they cannot be upheld guilty of any willful mis-statement or suppression of facts with intention to evade payment of duty so as to attract the provisions of the proviso Section 11A (i) of Central Excise Act, 1944. They also reply upon the Tribunal's order in the case of Dabur India Limited v. Collector of Central Excise, Meerut reported in 1997 (90) ELT 65 (Tri) in support of this contention.

5. We have carefully perused the case law cited by the appellants and we agree that in view of the same, the extended period of limitation is not attracted against them. Therefore, the duty demand and penalty in Appeal No. E/41/99 where the period of demand is beyond the normal period of limitation is set aside and the Appeal No. E/41/99 is allowed in toto.

6. As regards remaining two appeals, in appeal No. E/42/99 the demand for the month of July 1995 will be within time as show cause notice is dated 29/3/96 and in appeal No. E/64/99 the demand for the month of June 1995 will be within time as show cause notice is dated 4/01/96.

7. Therefore, while upholding the demands falling within the normal period of limitation in these two cases, we remand these two cases for re-quantification of the demands within the normal period of limitation.

8. In the result, appeal No. E/41/99 is allowed in full while appeal No. E/42/99 and E/64/99 are allowed by remand.