

Cce Vs. Capsugel India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-2005

Judge : P Bajaj, M T K.C.

Appellant : Cce

Respondent : Capsugel India Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue, the challenge has been made to the impugned order-in-appeal vide which the Commissioner (Appeals) has reversed the order-in-original of the adjudicating authority and set aside the duty demand along with the penalty, as detailed therein.

2. The learned SDR has contended that since the duty paid defective goods were received back by the respondents from their buyers and after carrying out certain processes on the same, such as, sorting, re-sorting, re-packing and re-labeling etc., which amounted to manufacture in terms of Chapter Note 3 to Chapter 35, they were liable to pay the duty again at the time of clearances those very goods. He has also contended that the ratio of the law laid down in the case of Ranbaxy Laboratory v. CCE, Chandigarh, vide Final Order No.A/374/03-NB(c) dated 9.7.2003 which has been followed by the Commissioner (Appeals) is sub judice before the Hon'ble High Court where their reference petition is pending. Therefore, the impugned order deserves to be set aside. On the other hand, the learned counsel had reiterated the correctness of the impugned order.

3. From the record, we find that there is no dispute regarding the receipt of the defective goods i.e. Gelatin Shells of capsule by the respondents from their buyers. They followed the procedure laid down in Rule 173-H of the Rules. The contention of the learned SDR that repacking, re-labeling etc. rendered by the respondents amounted to manufacture of the new goods by them in terms of Chapter Note 3 of Chapter 35, cannot be accepted in view of the earlier decision of the Tribunal in the case of M/s Ranbaxy Laboratory Ltd., supra, which has been followed by the Commissioner (Appeals). The operation of that order of the Tribunal has not been stayed or varied by the High Court so far, it still holds goods, and as such the total duty demand raised by the Revenue has been rightly set aside by the Commissioner (Appeals). Consequently, the impugned order is upheld and the appeal of the Revenue stands dismissed.

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