Alembic Ltd. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2005

Reported in : (2005)(185)ELT103Tri(Mum.)bai

Judge : K Kumar, A M Moheb

Appellant : Alembic Ltd.

Respondent : Commissioner of Customs and

Judgement :
2. The appellant, manufacture goods falling under Chapter 29. The dispute relates to eligibility to Notification No. 8/96-CE dt. 23.7.96 to Roxythromycin cleared during September 1996 - December 1996 and Nimesulide cleared during September 1996 -December 1997. Exemption under the said Notifications is available to goods falling under the above chapter if they are mentioned in Indian Pharmacopoeia or Pharmacopoeia of any other Country. Duty was demanded and penalty imposed as the appellants cleared the said goods availing of the exemption invoking larger period of limitation.

3. In regard to Roxythromycin appellants contention is that the product is specified in the third edition of European Pharmacopoeia published in June 1996, which replaced the earlier IInd edition w.e.f. 1.1.1997.

According to them Roxythromycin should be taken to have been included in pharmacopoeia form June 1996 and is therefore eligible for the benefit of exemption. In regard to invocation of extended period it was argued that there was no suppression of facts as they filed a declaration under Rule 173B and so the show cause notice is time barred.

4. We do not find merit in the appellants' submission. Admittedly in the Second Edition of European Pharmacopoeia Roxythromycin was not mentioned. The effective date of the third Edition of European Pharmacopoeia was 1.1.1997. There fore the Commissioner is right in holding that Roxythromycin was not included in any of the Pharmacopoeia prior to 1.1.97 and therefore prior to this date the concessional rate of duty is not available to this product. We find support in the Tribunal's decision in the case of Micro Orgo Chem & Others [2002 (53) RET 370 (CEGAT-Mum.)] which is para-materia to the present case. In regard to extended period of limitation the appellant had not furnished any declaration for 96-97. Copy of declaration filed with their appeal memorandum and also before Gujarat High Court only related to the period 95-96 claiming benefit of Notification No. 8/95. In the absence of declaration the charge of suppression has been rightly upheld in the impugned order. We do not find merit in the contention of appellant in so far Roxithromycin goes.

5. In respect of the other product Nimesulide we find merit in the appellants submission that the product specified in Martindale extra Pharmacopoeia is eligible for the benefit of concessional rate of duty during the relevant period. The Tribunal in the case of CCE Hyderabad v. Reddy Labs [2004 (65) RLT 78] held that the said pharmacopoeia is an official Pharmacopoeia of Great Britain. On merits the appellants are entitled for the exemption. We also observe that the appellants filed a declaration under Rule 173B covering the relevant period, a copy of which was annexed to the show cause notice.

6. In so far as penalty imposed under Section 11AC is concerned we observe that the period in question relates to September 1996 December 1996. Section 11AC is invocable for with this period. However having regard to the facts of the case we find that 100% penalty is not imposable. We therefore reduce the penalty to Rs. 3 lakhs (Three Lakhs). We set aside the penalty of Rs. 1 lakh imposed under Rule 173Q.