

Collector of Central Excise Vs. Indopharma Pharmaceutical Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-14-1983

Reported in : (1983)LC1220DTri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : indopharma Pharmaceutical Works

Judgement :

1. This is an appeal filed by the Additional Collector of Central Excise, Bombay-II, against the order No. V-2(14E)1244/81, dated 26.7.1982 of the Collector of Central Excise (Appeals), Bombay. The Additional Collector of Central Excise has been authorised by the Collector of Central Excise, Bombay-II to file the present appeal. M/s.

Indopharma Pharmaceuticals Works Ltd., have filed the cross-objection against the same order of the Collector of Central Excise (Appeals) dated 26.7.1982. Therefore, the appeal and the cross objection have been heard together and are being dealt with together for passing the common order.

2. After explaining the facts of the case, it has been contended in the appeal that there was suppression of fact on the part of M/s.

Indopharma Pharmaceuticals Works Ltd. SPASMINDON PAEDIATRIC DROPS were classifiable under Item 14-E of the Central Excise Tariff, and they did not pay the duty thereon. Therefore, the Assistant Collector has invoked 5 years of time

limit under the then Rule 10(1)(b) to demand duty on this medicine for the period 16.3.1976 to 28.2.1978. The Collector of Central Excise (Appeals) has held that there was no mis-statement or suppression of fact on the part of the licensee and that the demand for the period 16.3.1976 to 22.11.1977 was time-barred under Rule 10 and that the demand was justified for the period 23.11.1977 to 28.2.1978. For this reason he. has confirmed the levy of penalty on the licensee. Therefore, the question before us to consider is whether there was any wilful mis-statement on the part of the manufacturer during the period 16.3.1976 to 22.11.1977. The appellants have argued that the manufacturers did not file, the correct classification list, and, therefore, there was a wilful mis-statement in doing so. The manufacturers' undertaking to the State Excise Authorities to claim refund from them if Central Excise duty was levied from them has been described as a fraudulent behaviour on their part.

It has been argued by the appellant that the manufacturers deliberately paid duty to the State Excise Authorities so that they did not have to pay duty to the Central Excise department. On the aforesaid premise, it has been justified that there has been a wilful mis-statement and that the order of the Assistant Collector dated 10.3.1981 should be upheld under which the duty has been demanded from the manufacturers for the period 16.3.1976 to 22.11.1977.

3. The learned representative of the respondents has referred to the Assistant Collector's order and pointed out that the Assistant Collector has thoroughly condemned the behaviour of the manufacturers.

Yet when the Additional Collector of Central Excise, Bombay-II has filed the appeal, the manufacturer has been described in the appeal as the reputed concern. Apart from this, the manufacturers were under physical control of the State Excise Authorities, and it was only on 22.11.1977 that they came to know of the correct implications of the budget changes brought about by the Finance Bill of 1976, under which the manufacturers product SPASMINDON PAEDIATRIC DROPS went out of the purview of Medicinal and Toilet preparations (Excise Duties) Act, 1955 administered by the Maharashtra State Excise Authorities and came within the purview of Item 14-E of the Central Excise Tariff administered by

the Central Excise Department. This happened as the State Excise Authorities pointed out the change to the manufacturers in their letter dated 23.11.1977, Till then the manufacturers had included the medicine in question as a non-excisable item in the classification list filed by the manufacturers as per the provisions of Rule 173B of the Central Excise Rules, 1944. The Central Excise Officers had approved this classification list and they had full knowledge that the medicine in question was being manufactured by the factory and duty thereon was paid to the State Excise Authorities. The classification lists filed prior to the Finance Bill of 1976 and subsequently till the date of receipt of State Excise Authorities letter dated 23.11.1977 contained the same information. The Central Excise Department had approved these classification lists. There was no suppression of any fact much less any wilful suppression and the Central Excise Authorities had the full knowledge in the matter. In view of these facts the learned representative of the respondents requested that there was no justification in reviving - part of the demand which had been squashed under the order of the Collector of Central Excise (Appeals). He requested that the Collector's (Appeals) order should be maintained so far as it deals with the demand of duty. Pursuing the cross-objection filed by the licensee, the learned representative stated that the Assistant Collector had levied a penalty of Rs. 200/- on the manufacturers to justify his invoking the time limit of 5 years under Rule 10. The Collector (Appeals) had upheld this penalty. But there was no justification for the same, as there was no mens rea on the part of the manufacturers. Besides, the order of penalty appeared to be an after thought, as this part of the order was written in hand.

Accordingly, the learned representative requested that the order of penalty should be set aside and the cross-objection in this respect be allowed- 4. We have examined the submissions on both sides. We are unable to accept the contention in the appeal that there was wilful mis-statement on the part of the manufacturers. As mentioned on their behalf, the manufacturers have filed the classification list under Rule 173-B showing the medicine in question as Non-excisable. The real reason for not charging the Central Excise duty on the medicine in question seems to be that the true significance of the Finance Bill of 1976 was not understood either by the manufacturers or by the Central Excise Authorities or by the State Excise Authorities till the same was pointed out by the State Excise Authorities in their

letter dated 23.11.1977. It is also inconceivable that the manufacturers should pay the higher duty of 20% to the State Excise Department when they could have paid only 12% duty to the Central Excise Department. There is no reason for showing any wilful suppression of facts in this case.

Accordingly, we find that the appeal filed by the Additional Collector of Central Excise, Bombay-II is not tenable and we dismiss the same. So far as the cross-objection is concerned, though the demand for duty has been partly upheld under the order of the Collector of Central Excise (Appeals), there is no mens rea on the part of the manufacturers and therefore, we find that there is no justification for the levy of penalty of Rs. 200/- under Rule 173Q of the Central Excise Rules, 1944.

Accordingly, we set aside the order of penalty of the Assistant Collector and thus allow the cross-objection of M/s. Indopharma Pharmaceutical Works Ltd.

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