

Commissioner of Central Excise Vs. Naxpar Lab Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2005

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Naxpar Lab Pvt. Ltd.

Judgement :

1. Shri Vimlesh Kumar, Id. SDR, appearing for the revenue submits that the dispute in the present appeal relates to the correct classification of the respondent's product "DIGEPLEX SYRUP". The Commissioner (Appeals) has accepted the respondent's stand and has classified the said goods as medicaments under Heading 3003.10. Whereas, the revenue's contention is that the product is a correctly classifiable as enzymes falling under Heading 3505.00.

2. We have gone through the impugned order passed by the Commissioner (Appeals). Reference in the said order has been made to the earlier order of the Commissioner (Appeals) in the case of Aglowmed Ltd., holding such products as falling under Chapter 30. It has also been noticed that an identical product manufactured by Rallies Indian, was also being classified as medicaments. It has not been shown to us that the revenue has challenged the above order and declaration of classification list. It is further seen that the respondents had contested before the authorities below that their product is not an enzymes but the same were specifically formulated for the purpose of aiding digestion in digestive disorders and the same is included as medicaments in the Indian Pharmacopoeia.

Extracts of Indian Pharmacopoeia, 1996, were also produced in support of their claim of classification under Chapter 30. The appellate authority has observed that no test report has been relied upon to show that the goods are enzymes and do not have any curative value. It has also been noticed by the appellate authority that the goods are cleared in consumer packs and are known in the market as P&P medicine. Based upon all these he has held the product is falling under Chapter 30.

3. As against the above, the revenue has relied upon the Board's Circular No. 16/89 dated 6-3-1989 in support of their contention that enzymes are classifiable under Heading 35.07. On going through the said Circular, we find that the board was considering classification of enzymes being cleared in bulk, and which were being used in the manufacture of beverages and in tendering meat. The Board has also observed that to merit classification as a medicament under Heading 30.03, the goods should be a product comprising two or more constituents, which are being mixed or compounded together for therapeutic or prophylactic uses or in case of unmixed products, it should be suitable for such uses put up in measured doses or in packing for retail sale or for use in hospitals. The appellate authority has observed that the goods are packed in consumer packs, are known in the market as medicaments and are meant for curing digestion in digestive disorders. Such findings of the appellate authority have not been rebutted by the revenue. As such, we find that the circular, in fact supports the respondent's case. As such, we do not find any merits in the revenue's appeal and reject the same.

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