Collector of C. Ex. Vs. Eupharma Laboratories

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-1988

Reported in : (1989)(43)ELT471TriDel

Appellant : Collector of C. Ex.

Respondent : Eupharma Laboratories

Judgement :

1. Brief facts of the case are that the respondent company availed of the benefit of the Notification No. 117/66 dated 16-7-1966 in respect of patent or proprietary medicines (P or P medicines) sold by the respondent company to the E.S.I.C. - a Govt, department - on the prices in terms of the contract entered into by the respondent company with the E.S.I.C. authorities. The goods were, however, cleared by the respondent company through its distributors to the retail chemist shops approved by E.S.I.C. The distributors made a commission of 7% on such sales by the respondent company. The departmental authorities took an objection that the respondent company was not eligible to the benefit of the said notification inasmuch as the goods were not supplied directly to the Government departments i.e. E.S.I.C. authorities in the instant case but to the approved chemist shops which cannot be treated as Government departments. Accordingly, the terms of the notification namely P or P medicines "supplied directly from the factory of manufacture to Government departments including the railways local bodies and hospitals" are not fulfilled and therefore, such medicines cannot be extended the benefit of the said notification.

This point having been decided by the original authority at the first instance against the respondent company herein was decided in their favour by the lower appellate in its order-in-appeal dated 27-10-1978.

That authority, however remanded the matter to the adjudicating authority for checking on the two facts, namely (i) whether the sales by the manufacturers to the chemists involved monetary transactions and if so, whether the cost of these medicines were finally borne by the E.S.I.C. authorities. If this is so it was to be treated as a transaction between the appellants and the Govt, department and (ii) whether the price if it was recovered by the manufacturers from the approved retail chemists was the same as has been entered into the contract with the E.S.I.C. authorities. The original authority on readjudication confirmed the demands, denying the benefit of the notification, against the respondent company. Although the said authority answered in the affirmative to the questions referred to above which alone were to be looked into by the adjudicating authority, the reason for confirmation of demands against the respondent company was the same that the goods were not cleared to the E.S.I.C.authorities but to the approved retail chemist shops.

The lower appellate authority by the impugned order has again confirmed the earlier orders of the predecessor authority and he has fully agreed with the decisions of its predecessor authority. The appellant-Collector has filed the appeal against the impugned order on the same ground that the medicines have not been directly cleared to the E.S.I.C. authorities.

2. The respondent company vide its letter dated 12-11-1987 had requested that the case to be decided on merits.

4. We do not find merit in the appeal of the appellant-Collector.

Firstly, this point had already been decided by the lower appellate authority as early as October 1978 and the scope of remand by the said authority to the original adjudicating authority was limited in its scope i.e. of verifying the facts on two aspects as mentioned above.

The readjudicating authority could not go beyond the terms of the directions of remand of the superior appellate authority. Secondly, even on merits the word "directly" used in the notification would also cover the retail chemist shops approved by the ESIS authorities. Supply of P or P medicines to such approved shops is to be considered as good as supply to the Government department because such shops are the outlets of medicines for such Government department. Accordingly, the appeal is dismissed.