

**Commissioner of Central Excise Vs. P and B Laboratories Ltd.**

**Commissioner of Central Excise Vs. P and B Laboratories Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/41270](http://sooperkanoon.com/41270)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Dec-23-2005

**Reported in :** (2006)(105)ECC29

**Judge :** T Anjaneyulu

**Appellant :** Commissioner of Central Excise

**Respondent :** P and B Laboratories Ltd.

**Judgement :**

2. The Department is in appeal against the impugned order passed by the Commissioner (Appeals), Central Excise, Mumbai, for reducing penalty amount to Rs. 50,000/- (Rupees Fifty Thousand only) from Rs. 6,77,975/- (Rupees Six Lakhs Seventy Seven Thousand Nine Hundred Seventy Five only) and further waiving the penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Rule 173Q.3. The appellants herein are engaged in the manufacture of fixed dose combination (FDC) of Vitamin B1, B6 and B12 under brand name Aneudox-12 and classified the same under Chapter sub-heading 3003.00 of the first Schedule to the CETA, 1985 as patent of propriety of medicaments in their classification declaration. Whereas the Department wanted the classification under Chapter sub-heading 2936.00 as the appellants were mis-declared the same as medicaments with therapeutic uses. The appellants went before the Delhi Tribunal aggrieved by the order of the Department as the Tribunal has confirmed classification as sought by the Department. In some other similar matter, the Western Zonal Bench, Mumbai, felt that the said goods are classifiable under Chapter 30 of the CETA, 1985. As

there were conflicting views for the said product by the two Benches, the matter was referred to the Larger Bench. The Larger Bench upheld the classification in the case of E. Merck (India) Ltd. v. CCE, Mumbai that is to say under 4. The contention of the Id. counsel of the appellants that in view of the decision of the Larger Bench, there was no mis-calculation of their goods and as such the Commissioner (Appeals), Central Excise, Mumbai, has rightly reduced the penalty amount basing on the Supreme Court's decision in the case of M/s. Hindustan Steel Ltd. Further he relied upon the following cases: Anand Metal Industries v. CCE, Ghaziabad. 2005 (157) ELT (119) (Tri. - Del) (b) Indocom Projects Equipments Ltd. v. CCE, New Delhi-II. He stressed on the point that classification dispute is purely a legal issue and no penalty is imposable for the same.

5. Having convinced about the legal position, I am of the view that there was no deliberate mis-classification on the part of the Respondents herein. The impugned order passed by the Commissioner (Appeals) is liable to be upheld. I do not see any error in the impugned order. On the other hand, the appeal lacks merits accordingly dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**