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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-16-2006

Judge : P Chacko, K T P.

Appellant : Sol Pharmaceuticals Ltd.

Respondent : Cce

Judgement :

1. Pursuant to the Hon'ble Supreme Court's order in Civil Appeal No.4359/2000, we have to settle a classification dispute in this case. The appellants were engaged in the manufacture of "P or P Medicaments" during the material period. These goods were classified under SH 3003.20 and cleared for home consumption at 'Nil' rate of duty during the said period. However, the same goods cleared for export (under Bond) during the same period were claimed to be classifiable under SH 3003.10 attracting duty @ 15% ad valorem and Modvat credit was availed in respect of the duty-paid inputs used in the manufacture of the export goods. The Modvat credit so availed on duty-paid inputs used in final products cleared for export from 7.10.94 to 15.2.95 amounted to Rs. 36,04,926/-. The Commissioner disallowed this credit to the assessee under Rule 571 of the Central Excise Rules, 1944 and imposed on them a penalty of Rs. 15 lakhs under Rule 173Q(1)(bb) of the said Rules, after holding the export goods to be classifiable under SH 3003.20 chargeable to 'Nil' rate of duty. Hence the present appeal.

2 There is no representation for the appellants despite notice, nor any request of theirs for adjournment. In the circumstances, we are constrained to dispose of this appeal after examining the records and hearing SDR.3. It appears from the records that the assessee claimed classification of the goods under SH 3003.10 by affixing on the paper cartons used for clearing the export goods, what was claimed to be their brand-name. The same goods were cleared for home consumption in plastic boxes with no brand-name affixed thereon. For example, "AMPICILLIN CAPSULES B.P. 500 mg." Packed in blisters (each containing 10 capsules) were cleared for export in cartons (each carton carrying 10 blisters) with alphabets "SOL" stylishly printed thereon. The printed matter is reproduced below: When the medicine was cleared for home consumption, the above alphabets (with the black bands and stripes therewith) were not printed or otherwise depicted on the plastic containers. According to the appellants, "SOL" was their brand-name and, therefore, the medicine which was cleared in containers with the brand-name printed/affixed thereon was different from the medicine without the brand-name cleared for home consumption. According to them, the medicament cleared under the brand-name could be classified only under SH 3003.10 in terms of Chapter Note 2 (ii) of Chapter 30 of the CETA Schedule. According to the Revenue, represented before us by Id. SDR, "SOL" was not a brand-name but only a 'house-mark' of the appellant-company. In her bid to establish that "SOL" was only a house-mark and not product-mark (brand-name), Id. SDR relied on the Supreme Court's judgment in Astra Pharmaceutical (P) Ltd v. Collector and the Tribunal's decision in Wockhardt Ltd. v. Collector 2000 (124) ELT 386 (T). It was also argued that, even if it be assumed that "SOL" was a brand-name belonging to the appellants, they would not get the benefit of Chapter Note 2 (ii), inasmuch as it was not shown that the capsules or the blisters containing them were also bearing the brand-name.

4. After carefully considering the rival contentions, we have to reject Id. SDR's argument that "SOL" was a house-mark only and not a product-mark/brand-name. It is noteworthy that the three alphabets not only formed a part of the logo but also formed part of the printed matter (relating to composition and dosage of the medicine) on the carton. In this printed matter, "SOL" was immediately followed by "Manufactured by: SOL Pharmaceuticals Ltd. Road No. 5, I.D.A., Nacharam,

Hyderabad - 501 507. INDIA". From the way "SOL" was used in the printed matter on the carton, it would appear that it was used to indicate a connection, in the course of trade, between the medicine and its manufacturer and was not used merely to project the image of the manufacturer generally. The cases cited by Id. SDR are distinguishable from these facts. In other words, "SOL" as used as part of the label for the cartons containing the export goods, fitted well in the definition of "brand-name" under the Trade & Merchandise Marks Act, 1958. However, as rightly pointed out by Id. SDR, there is no material on record to show that the brand-name was affixed on the capsules or the blisters containing them. The appellants' own write-up on "Ampicillin capsules" is reproduced below: Ampicillin capsules cleared for home consumption are packed in bulk with 1000 capsules of I.P. Grade in each container which is plastic container. There is no carton packing for home consumption. A plain label is affixed on the container showing that the container has 1000 capsules of Ampicillin capsules I.P.250 mg or Ampicillin capsules of 500 mg. as the case may be. Whereas the product cleared for export consists of Ampicillin capsules of BP grade and is packed in 10 10"s in blisters. Further there is a coloured thick band of about 3 cms. width which is followed by a thick black line and six thin lines and the company's logo 'SOL'. This kind of packing for export is done according to specifications of the concerned importer.

It does not appear from the above write-up that the blisters or the capsules packed therein were bearing the brand-name "SOL". What appears is that the cartons in which the capsules in blisters were cleared for export were bearing the brand-name. In order to fall within the definition of "P or P Medicament" under Chapter "Note 2 (ii)", the goods should bear a brand-name either on itself or in its container or both.

It has not been shown to us that 'Ampicillin' capsules or the blisters containing them were bearing the above brand-name. Therefore, the goods cleared for export did not attract SH 3003.10 (Patent or Proprietary medicament) and the same fell under SH 3003.20.

5. In the result, we classify the export products under SH 3003.20 for the material period and affirm the demand of duty for the normal period prior to the date of

issue of the relevant SCN [in view of the apex court's ruling in ITW Signode India Ltd. v. Collector]. The adjudicating authority has imposed a penalty of Rs. 15 lakhs. Having regard to the nature of the dispute we have dealt with, we are of the view that penalty of such magnitude as determined by the Commissioner is harsh. We reduce the quantum of penalty to Rs. 1,00,000/-. (Rupees One lakh only)

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