

Gopal Repackers Vs. Commissioner of Central Excise

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

Decided On : Jul-13-2006

Reported in : (2007)(114)ECC22

Judge : P Chacko, K T P.

Appellant : Gopal Repackers

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is against demand of duty of over Rs. 25 lakhs on a product called "Gluco vita - Glucon D" for the period 01.03.1986 to 11.05.1990, raised by learned Commissioner in the impugned order. The appellant is also aggrieved by the penalty of Rs. 50,000/- imposed on him by the Commissioner. After examining the records and hearing both sides, we find that the show-cause notice, which has ultimately led to the present proceedings was issued as early as on 28.09.1990. This notice raised a demand of a larger amount of duty on M/s Corn Products Company (India) Ltd. (CPCIL, for short) in respect of "Gluco vita - Glucon 'D'" manufactured and cleared from their factory during the above period. The notice also proposed penalties on the appellant and others under Rule 209A of the Central Excise Rules, 1944. This notice clearly alleged that the above goods had been manufactured and cleared by M/s CPCIL, without payment of duty, without observing Central Excise procedures etc. The allegation raised against the appellant and others was that they had removed and transported the said goods, which were manufactured by M/s. CPCIL. In adjudication of this notice, the

Collector of Central Excise passed Order-in-Original dated 12.12.1991 confirming the entire demand of duty against M/s. CPCIL and imposing on them a penalty of Rs. 1 lakh, besides a separate penalty of Rs. 5,000/- on the appellant. The aggrieved parties preferred appeals to this Tribunal and the appeals were disposed of by a remand order dated 15.09.1993. Pursuant to the remand, learned Commissioner of Central Excise passed a fresh order of adjudication on 19.09.1996, this time casting the duty liability on the appellant to the extent of Rs. 25,79,592. He also imposed a penalty of Rs. 2.5 lakhs on the appellant.

This time the Rule 209A penalty fell on M/s. CPCIL. Panicked by this decision, the appellant again rushed to the Tribunal and their appeal happened to be disposed of along with similar appeals of other parties.

The order passed by the Tribunal in the group of appeals on 12.06.2002 was also an order of remand. Pursuant to that order, learned Commissioner of Central Excise passed the impugned order.

2. After examining the records and hearing both sides, we find that the challenge offered by the appellant to the Commissioner's order is irresistible. The following submissions of their Counsel merit serious consideration: (a) The impugned order fixing duty liability on the appellant is beyond the scope of the show-cause notice, wherein duty had been demanded from another party viz., M/s. CPCIL.

(b) The findings recorded by the lower authority in the context of considering the plea made by the appellant for valuation of the goods in terms of the Hon'ble Supreme Court's ruling in the case of Ujgar Prints are diametrically against his own findings recorded in the context of fixing duty liability.

(c) In Circular No. 21/70 dated 04.06.1970, it had been clarified by the Ministry that no further duty liability arose on the re-packing of duty-paid Glucose or Dextrose even if some other ingredients such as Calcium Phosphate and Vitamin 'D' were added before the packing.

It was only as late as in 1990 that a different view was taken by the Board vide Circular No. 7/90-CX.1 dated 07.03.1990, wherein the product resulting from

addition of Calcium Phosphate and Vitamin 'D' to Dextrose monohydrate was held to be dutiable as a distinct goods classifiable under SH 1702.21 of the CETA Schedule. As the period of dispute (barring 2 months) is prior to issuance of the second circular, the appellant must get the benefit of the first circular. We have heard learned SDR also with reference to the above points raised by learned Counsel.

3. It appears from the records that all the points raised by learned Counsel for the appellant are eminently valid. We have already mentioned the nature of the allegations contained in the show-cause notice. They were to the effect that the goods in question were manufactured and cleared by M/s. CPCIL. No corrigendum to the notice was ever issued. When it ultimately came to be adjudicated upon by learned Commissioner in the second de novo proceedings, he chose to cast duty liability on the appellant, which is clearly unsustainable in law. On this fundamental ground, the present appeal succeeds. We need not examine the other points. The impugned order is set aside and this appeal is allowed with consequential reliefs.

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