**Reckon Diagnostics Pvt. Ltd. Vs. Commissioner of C. Ex.**

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**SooperKanoon Citation** : sooperkanoon.com/44182

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

**Decided On :** Nov-23-2006

**Judge** : N T C.N.B., T Anjaneyulu

**Appellant** : Reckon Diagnostics Pvt. Ltd.

**Respondent** : Commissioner of C. Ex.

**Judgement** :

2. Duty demands have arisen on two grounds. One is that the water sold by the appellant is under a brand name (Pure Water). The submission of the appellant is that they use no brand name and the label merely says the quantity of water, for example, 5 ltrs. pure water. It is the contention that the writing of 'pure water' is not in a manner as to make it a brand name. It is being pointed out that in branded water is not subject to any duty. The second demand is in regard to 'Widal' Testing . The dispute is whether the item will go under chapter Heading 38 at nil rate of duty or under Chapter 30 which is takable 16%. The contention of the appellant is that testing is by using 'Salmonella Antigens' and such items are classifiable under Heading 30. Reliance has been placed on the Stay Order of this Tribunal in the case of J.Mitra & Co. .

3. Prima facie there is merit in the contentions of the appellant.

Water containers in question seem to be only bearing a lebel indicating the quantity of water packed (5 litre Pure water). There does not seem to be any use of brand name. The testing uses micro organisms. Such items are to fall under

Chapter 30 according to our earlier Stay order.

4. In the result, the stay application is allowed and recovery stayed till disposal of the appeal.