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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-27-2007

Reported in : (2007)(118)ECC378

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Dil Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The issue for determination in the above appeals against the common order of the Commissioner of Central Excise (Appeals) viz., classification of products "DIL VIT D3-200" and "DIL VIT D3-500" is no longer res Integra as it has been held by the Tribunal in the case of Glaxo India Limited v. CCE 1992 (69) ELT 124; Tetragon Chime Pvt. Ltd. v. CCELi Taka Pharmaceuticals v. CCE that such products are of a kind used in animal feeding falling under Chapter heading 23.02 even though they are not obtained by processing vegetable or animal material to such an extent that they have lost the essential characteristics of the original material other than vegetable residues and byproducts of such processing.

2. In the present case the demands raised in the show cause notices issued to the appellants for classification of the products as mixtures of Vitamin under Chapter heading 29.36 were dropped by the Additional Commissioner following the earlier order-in-appeal dated 30/09/1999 of the Commissioner (Appeals) which was based on the Tribunal's judgment in the case of Glaxo (India) Limited cited supra

while the Commissioner (Appeals) allowed the appeals of the Revenue on the ground that the manufacture of the products started with Cholesterol Acetate which is converted into '7 Dehydro Cholesterol' then converted into impure vitamin and after esterification/saponification yields crystalline Vitamin D-3. which is mixed with solvents, diluents, anti oxidants, etc., and they are not obtained by processing of vegetable or animal material as required in terms of the note to Chapter 23 of the schedule to the CETA, 1985.

3. There is no dispute that the products are of a kind used in animal feeding. Therefore, in the light of the above judgments we hold that they are classifiable under heading 23.02 and set aside the impugned order and allow the appeals.