

Atlantic Pharmaceuticals Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-16-2007

Reported in : (2007)(119)ECC433

Judge : T Anjaneyulu

Appellant : Atlantic Pharmaceuticals

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. This appeal is filed against the order-in-original dated 31.1.2004 passed by the Commissioner (Appeals). Central Excise, Mumbai. The appellants herein are manufacturers of concentrated haemodilysis solution BP falling under chapter heading 3003.20 of the Central Excise Tariff Act, 1985 and were claiming SSI exemption under Notification No. 8/02 and were filing appropriate returns.

2. On 26.6.2002, during the rainy season 4490 cans were damaged when the flood waters entered their manufacturing premises at Vasai. They were damaged due to water logging and became unfit for human consumption. Out of this lot of 4490 only 3776 could be physically located as per the loss assessor's report. The insurance company's surveyors assessed the loss due to floods and in his presence the damaged goods were destroyed i.e. solution was thrown out and the balance was struck as NIL due to disposal of damaged / destroyed goods on 1.7.2002. The department was also informed about the damage and goods

becoming unfit. Copy of the clearance from April 2002 to June 2002 being Rs. 29 lakhs was sent to the Commissioner. The appellant was not availing cenvat on 14.9.2002. The loss was informed to the insurance company who has accepted the loss at Rs. 15,16,410/- as quantified by the insurance surveyor. On 6.6.2003 application for remission of duty due on goods damaged was lodged. On 24.6.2003 a show cause notice-cum-demand notice was issued seeking duty of Rs. 99,239/- in respect of goods destroyed by the floods. The Commissioner (Thane II) rejected the application for remission on the ground that the damaged goods were destroyed without taking prior permission vide Letter dated 4.7.2003, signed by the Additional Commissioner (Technical). On 29.9.2003, the Assistant Commissioner decided the issue for recovery of duty merely on the strength that Commissioner of Central Excise had communicated his decision and ordered recovery of duty with interest. On 7.12.2003 an appeal was filed against this demand since the assessee was well within exemption limit and on other grounds. On 9.2.2004 the appeal was rejected on the ground that the rejection of revision application was an administrative order and was not an appealable order and the commissioner (Appeals) also held that assessee has not preferred an appeal against the said order of rejection of revision. Hence this appeal.

3. The question before this Tribunal is whether the department could seek recovery on these goods lost and destroyed due to flood. As the Commissioner's order on rejection of remission request was passed without hearing the assessee and this order goes to the root of demand of duty with interest and no appealable order was passed by the said Commissioner, the decision having been communicated by the Additional Commissioner, valuable rights of the assessed to have a hearing in the application for remission were deemed to have been denied. Therefore, the order of rejection of the application for remission on which the entire duty demand rests has been passed in violation of principles of natural justice and the demands consequent to such an act cannot be upheld. Assessee also pleads that his turnover is within SSI limit.

This aspect also needs to be verified. The Assistant Commissioner's action in confirming the demand without plea that remission is not finally determined is premature. Therefore, appeal is allowed in remand to the Additional Commissioner

with a direction that he should await issue of speaking appellabel order by the Commissioner on the application of remission filed by the assessee. Needless to add that Commissioner will grant a hearing and determine the plea of remission and pass order. Order accordingly.

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