

S.S. Pharma Chem Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-2007

Judge : T Anjaneyulu, A T K.K.

Appellant : S.S. Pharma Chem

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are engaged in the manufacture of bulk drugs and pharmaceutical products for which they claimed exemption under Notification 8/95 dated 9.2.95 and 1/93 dated 28.2.93. In the classification list filed on 15.5.95 they claimed full exemption for their product Diethyl Carbamazine under Notification No. 8/95 and there is no dispute on that. Similarly in respect of Sl. Nos. 2 to 11, the appellants have claimed effective rate 10% being "Bulk Drugs" vide Notification No. 8/95 dated 9.2.95. In respect of Sl. No. 12 to 16 which are not bulk drugs, they claimed exemption under Notification 1/93 dated 28.2.93 which is applicable to small scale units. They were issued a show cause notice stating that since they had not claimed benefit of Notification 1/93 in respect of products at Sl. 2 to 11, it is to be held that they had not opted for benefit under Notification 1/93 and therefore they cannot be allowed the concessional rate of duty in view of proviso to para 4 of Notification No. 1/93 as amended vide Notification No. 59/94 dated 1.3.94 which reads as under: Notwithstanding the exemption contained in paragraph 1 of the notification, a manufacturer shall have the option for not availing the benefit of the exemption contained in said paragraph and to pay duty

of excise at the rate applicable to the specified goods but for the exemption contained in the said paragraph 1, subject to the condition that such manufacturer shall pay duty at the rate applicable but for the aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which date of option falls.

2. The appellants contention is that no where in their classification list they have opted out of Notification 1/93 and in fact they have claimed benefit of it in respect of products 12 to 16 i.e. products other than bulk drugs. The only issue is that they had claimed benefit in respect of 5 products while the benefit was not claimed in respect of other 10 products. This does not mean that they have opted out and claimed benefit only partly in a financial year. In view of this benefit cannot be denied to them.

3. The Id. DR, however submits that Notification 1/93 was available to them even for Sl. 2 to 11 as para 1(b) of Notification 1/93 itself says that the goods are exempted under this clause, from so much of the duty of excise leviable thereon which is specified in the said Schedule (read with any relevant notification issued under Sub-rule (1) of Rule 8 of the said Rules or Sub-section (1) of Section 5A of the said Act, and in force for the time being), as is equivalent to an amount calculated at the rate of 10 percent ad valorem, subject to the condition that total duty of excise payable should not be less than 5% ad valorem. In view of this the appellants could have availed the Notification 1/93 along with 8/95 which they have not done. Accordingly the benefit of exemption under Notification 1/93 cannot be extended to them as they will be deemed to have opted out from 15.5.95.

4. We have carefully considered the submission. We find that the appellant is entitled to the benefit of Notification 8/95 along with 1/93 and will in fact be entitled to refund of duty as they were required to pay duty @ 5% even in respect of bulk drugs listed at S.No.2 to 12 of this classification list. We also note the benefit of the Notification has been claimed from the beginning of the year and not for the part of the year and if it is revenue case, the benefit should have been claimed for both the categories together, they should have made it known to the appellants rather than denying the benefit in respect of products listed 12 to 16 and differential duty

accordingly should have been demanded. In view of this, we remand the matter back to the Asst. Commissioner to take into account the applicability of Notification 1/93 along with 8/95 in respect of the entire products at S. No. 2 to 16 and to demand duty thereafter if still there is some short payment after affording an opportunity of hearing to the appellant.

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