

Wockhardt Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-07-1993

Reported in : (1993)(68)ELT916Tri(Mum.)bai

Appellant : Wockhardt Limited

Respondent : Collector of Central Excise

Judgement :

1. For hearing the applicant's appeal on merits, they are required to deposit Rs. 18,21,085 /-towards duty.

2. Shri C.S. Lodha, the learned advocate pleads that though the show cause notice is within time, they have a prima facie ground on merits, since the issue is covered by the decisions of the Madras High Court reported in 1978 (2) E.L.T. G 478) and 1983 (12) E.L.T. 725 (Mad.) and also the decision of the Special Bench in the case of Bengal Chemicals & Pharmaceuticals Works Ltd. reported in 1989 (43) E.L.T. 591 (Tribunal). The allegation by the department is that they are using a colour scheme and also putting the name of the appellant as "Wockhardt" prominently on the labels. The writing "Wockhardt" 'is only to indicate the name of the manufacturer. They have got a monogram with a triangle with which the name Wockhardt is written. He showed the monogram to distinguish the writing of Wockhardt on the labels. He also submitted that the name Wockhardt is not written in a different style of writing so as to indicate any connection with the manufacturer. It is only to ensure that the name of the manufacturer is given in the labels for the purpose of easy identification. In the case of Bengal Chemicals,

Special Bench has held that the name Bengal Chemicals even though registered as a trade mark, such name figuring on the caps cannot make it a branded medicine. In the case of Indo-French Pharmaceuticals Co.

decision by Madras High Court is that even the monogram has been held to be not indicative of any connection with the manufacturer. In view of these case laws in their favour, he seeks for a stay of the demand.

3. Shri Jain, the learned JDR however contends that the writing "Wockhardt" is prominently shown on the labels and only the appellant has got the right to put the printing "Wockhardt" prominently on the labels.

4. After hearing both the sides, prima facie, the case laws cited by the learned advocate seem to be covering the issue. We find that in this case they have separate monograms with the inscription "Wockhardt" being used on the branded medicine manufactured by them. The colours on the labels are also found to be used by other manufacturers. The items in question are prescribed in the form of pharmacopia and are not marketed under any brand name. In the circumstances, prima facie they seem to have a case in their favour. In view of the aforesaid position, we direct the applicants to furnish a personal bond covering the duty amount within a period of 4 weeks from the date of communication of this order and reporting compliance within 5 weeks failing which their appeal is liable to be dismissed. On furnishing the personal bond, there shall be stay and waiver of recovery of the duty amount.

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