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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-12-1993

Reported in : (1995)(78)ELT484TriDel

Appellant : Time Pharma

Respondent : Collector of Central Excise

Judgement :
1. This is an appeal preferred against the impugned order passed by the Collector of Central Excise (Appeals), Bombay.

2. When the matter had come up for hearing, none appeared for the appellants. However, we find that there was a request from them to decide the case on merits. Accordingly, we have proceeded to hear Shri Somesh Arora, learned SDR to pass this order.

3. The appellants are manufacturers of Antiseptic perfumed creams. They claimed exemption under Notification No. 126/86, dated 1-3-1986 which was granted by the Assistant Collector. Not being satisfied with the said order the Department filed an application under Section 35A(4) of the Central Excises and Salt Act on the ground that exemption allowed by the Assistant Collector was not proper.

4. There are two conditions for availing the concession at the rate of 20%. They are (i) The products should be manufactured under Drug License issued under the Drugs and Cosmetics Act, 1979 and (ii) Its prices are fixed under Drugs (Price

Control) Order, 1979.

5. In this case the appellants are S.S.I. Unit and they have got the Drugs & Cosmetics licence. Since they are S.S.I. Unit, their product is exempted from Drugs (Price Control) Order. The case of the Department is that admittedly the impugned product has not fulfilled the second condition inasmuch as its prices are not fixed under Drugs (Price Control) Order, 1979 and hence it is not entitled for the benefit of exemption under the notification. It was contended on behalf of the appellants before the Collector (Appeals) as well as in their grounds of appeal before us that it would create an anomalous situation where the bigger units whose retail prices are fixed under the Drugs (Price Control) Order would be eligible for exemption and the small scale units who are exempted from the Drugs (Price Control) Order would have to pay tariff rate of 105%. These contentions were negatived by the Collector (Appeals) who held that Assistant Collector was wrong in granting exemption since the party has not fulfilled the second condition of the proviso to the Notification No. 126/86.

6. While justifying the findings of the Collector (Appeals) Shri Somesh Arora submitted that no hardship would be caused to the S.S.I. Units while exempting the fixation of prices to them in comparison to the big Industries. Irrespective of that fact the Department is concerned with notification while granting exemption and notification is not one designed to S.S.I. Units. There is no discrimination in this case and notification has to be strictly construed and on plain reading of notification the party is not entitled to exemption since they have not fulfilled the second condition therein.

7. We have considered the matter. Antiseptic perfumed creams manufactured by the appellants are covered under Category-Ill formulations to the third Schedule to the Drugs (Price Control) Order, 1979 at Serial No. 15 under the heading 'Antiseptics'. As per S.O.194(E), dated 2-4-1979 issued by Government of India under paragraph 31 of the Drugs (Price Control) Order, 1979, the appellants are exempted from the operation of paragraphs 13 & 14 of the said order, in so far as they relate to formulations specified in Category-Ill of the Third Schedule to the said order. In other words S.S.I. Units have been exempted from getting fixed

retail price under the aforesaid paragraphs 13 & 14 of the said order. We find exhibit 'M' placed on record that as per S.O. 313(E) Central Government fixed the price of cream containing boric acid and zinc oxide in exercise of the powers conferred by clause (a) of sub-paragraph (6) of paragraph 13 of the Drugs (Price Control) Order, 1979. Hence price of the product in question as such was fixed by the Government but S.S.I. Unit has been exempted from getting fixed retail price. To avail concessional rate of duty under notification the manufacturer should have licence issued under Drugs & Cosmetics Act, 1940 and price of product should have been fixed under Drugs (Price Control) Order, 1979. In the notification we do not find any condition that the fixation of price should be for the specific branded product manufactured by a S.S.I. Unit as it was rightly pointed out by the appellants in their grounds of appeal. It is sufficient that price of that product as such of that industry had been fixed and once in this case the price of the product has been fixed as per order of the Government, we do not find any justification to deny the benefit in terms of Notification No. 126/86, dated 1-3-1986. In the view we have taken, we set aside the impugned order and, accordingly, the appeal is allowed.