Roche Products Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-02-1995

Reported in : (1995)(78)ELT127Tri(Mum.)bai

Appellant : Roche Products Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the Order-in-Appeal No. ADN-878/B-I/90 IV-2(30)624/B-I/89J, dated 17-10-1990 passed by the Collector of Central Excise (Appeals), Bombay, rejecting the appellants appeal.

2. The facts of the case are that the appellants filed a classification list for Saridon as P or P medicine claiming nil rate of duty under Notification No. 29/88, dated 1-3-1988. During the period when the item was cleared at nil rate of duty, they did not avail Modvat benefit. The Assistant Collector however, denied the exemption by passing the Order-in-Original dated 6-10-1988. This order of the Assistant Collector on merits has been accepted by them and hence would be paying duty on the final product.

3. Shri S.S. Gupta, the Ld. C.A. pleads that though they have challenged the Assistant Collector's order on denial of exemption and they have filed a refund claim, they would be withdrawing the appeal and also the refund claim filed claiming nil rate of duty. In other words, he pleads that they are accepting the dutiability of the final product cleared. Their only plea is for allowing Modvat benefit

in respect of the inputs used in the manufacture of the final product, which was earlier assessed at nil rate of duty but subsequently held to be dutiable by the order of Assistant Collector referred to above. Both the authorities below however refused Modvat benefit. Shri Gupta also produced the duty payment documents in respect of inputs and would plead that they will be able to satisfy the authorities below with regard to the usage of the duty paid inputs and the corresponding GP Is for working out the duty element for allowing Modvat benefit. He also pleads that the documents were earlier verified by the authorities.

4. Shri K.P. Mishra, the Ld. SDR however, pleads that they have not followed the procedure prescribed inasmuch as they could have claimed assessment for nil rate of duty provisionally and taken the Modvat credit also provisionally, which has not been followed. Hence he justifies the order.

5. After hearing both the sides, we find that if the assessment decided by the Assistant Collector in his order dated 6-10-1988 is accepted finally by the appellants and they produce proof regarding withdrawal of the appeal before the Special Bench and also withdraw their refund claim, then the product is to be held as dutiable as per the order of the Assistant Collector. In that case, they could claim Modvat benefit only at that point and not earlier. It is a settled law that procedural requirement cannot come in the way of substantive benefit conferred in the Modvat scheme. Hence we direct the Assistant Collector to work out the Modvat benefit on the basis of the gate passes produced regarding inputs used in the manufacture of the final product and work out the duty involved on the final product for enforcement. Appeal is allowed in the above terms.