

Group Pharmaceuticals (P) Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-05-1995

Reported in : (1996)(84)ELT440TriDel

Appellant : Group Pharmaceuticals (P) Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. This appeal arises from orderin-appeal dated 19-8-1988 passed by the Collector (Appeals), Bombay. The Asstt. Collector had approved the classification lists No. 204 & 205 in respect of goods manufactured by the appellants under Tariff Items 14E and 14F respectively, extending the benefit of slab exemption as envisaged under Notification No.83/83-C.E., dated 1st March, 1983 but holding that the value of goods manufactured elsewhere on behalf of the appellants would be computed for determining the eligibility of benefit given under the said notification. On appeal, the Id. Collector has held that the appellant is a loan licensee for the goods manufactured in the other factories and therefore, there is a case for treating that the appellants are the manufacturers of the appellant's unit at Boisar in terms of Notification No. 83/83-C.E. which uses the words: The Id. Collector has held that the provision of the notification is that the clearances made by or on behalf of the loan licensee from his own factory as well as elsewhere would require to be clubbed for the purpose of working out this exemption slab.

2. We have heard Id. Advocate Shri Rajesh Kumar for the appellant and Shri Somesh Arora, Id. JDR for the revenue. In this matter, Id.Advocate relied on the

ratio of the following judgments: M/s. S.O.I. Pharmaceuticals Ltd. v. Collector of Central Excise - 1992 (57) E.L.T. 290 (ii) M/s. Aarex Laboratories v. Union of India - 1991 (56) E.L.T. 532 M/s. Truechem Pharma (P) Ltd. v. Collector of Central Excise - 1991 (56) E.L.T. 690 (iv) M/s. Indica Laboratories Pvt. Ltd. v. Union of India - 1990 (50) E.L.T. 210 Ld. Advocate submitted that the job workers have to be treated as manufacturer and therefore, the clearances made from one independent unit of the same manufacturer cannot be clubbed with the clearances of the other unit. Each unit of the manufacturer has to be treated as an independent manufacturer.

3. Ld. DR submitted that the ratio of the judgments cited above is clearly distinguishable in as much as that in those cases, the appellants were job workers and not unit of the same manufacturer. In this case, the company was same and they had two units, one at Tarapur and another at Boisar under the same management and both were carrying on the business as a single unit of a manufacturer. Therefore, in terms of the Notification No. 83/83-C.E., the clearances of both the units are required to be clubbed.

4. We have carefully considered the submissions made by both the sides and have perused the judgments cited above. In the case of M/s. Indica Laboratories Pvt. Ltd. (supra), it has been held that if the loan licensees who get their PP medicines manufactured at SSI factories belonging to somebody else but under their own supervision or control from their own raw-material and if they affix their trade name or brand name on these manufactured goods, they will be entitled to the benefit of exemption Notification No. 175/86 read with Notification No. 223/87 but they must be genuine loan licensees and not bogus parties who may be merely limbs of the factory owners.

5. On a careful consideration of the citation, it is seen that this judgment is helpful to Revenue and not to assessee. The judgment mentions it very clearly that they have to be the genuine loan licensees and not bogus parties, who may be merely limbs of the factory owners. In this case, there is no loan licensee but both the units are belonging to the appellants themselves and in a circumstance like this, the citation is not helpful to the appellants. In the case of M/s.

Aarex Laboratories (supra) the Hon'ble Gujarat High Court referred to its earlier judgment rendered in the case of Indica Laboratories and reiterated the same point. Therefore, this judgment is also against the appellants. In the case of M/s. Truechem Pharma (P) Ltd., the Tribunal has considered the same point and has held that the loan licensees are also manufacturers within the meaning of the terms as envisaged by the said Act and the Rules, and especially when they get their goods manufactured under their own control or supervision and out of their own raw material at the factory premises belonging to some one-else and which premises they might have hired for the time being shiftwise or otherwise. The Tribunal has further considered the Notification No.80/80C.E., dated 19-6-1980 in respect of the terms: "Provided that the aggregate value of the clearances of the specified goods from any factory by or on behalf of one or more manufacturers" and held that it follows that the exemption from payment of duty upto the prescribed aggregate value of clearances was in respect of overall clearances from the factory and was not available individually to each manufacturer or loan licensee on whose behalf manufacturing activity was carried out within the factory. In the case of Truechem Pharma (P) Ltd. the facts are that they were getting the goods manufactured from two independent manufacturers namely M/s. Indica Laboratories Pvt. Ltd. and M/s. Aarex Laboratories on their behalf and hence on the basis of this interpretation and in the light of the earlier judgments, it was held that the demands against the appellants would be sustainable. The judgment is also in favour of the Revenue. In the case of S.O.I.Pharmaceuticals Ltd., the Tribunal found the appellants to be an independent manufacturer and on that ground allowed the prayer of the appellant. This judgment is clearly distinguishable from the facts of the present case. In the present case both the units are belonging to the same manufacturer, therefore, the lower authorities have rightly rejected the appellant's claim and same is required to be confirmed in the light of the judgments referred to by the appellants themselves.

Appeal is, therefore, dismissed.

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