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Consol Products Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-1995

Reported in : (1996)(83)ELT131TriDel

Appellant : Consol Products

Respondent : Collector of Central Excise

Judgement :

1. The issue for decision in this appeal is the classification of contact lens solution manufactured by the appellant.

2. The appellant was not present at the hearing, and no request for adjournment has also been received. Notice of hearing is seen to have been received on 3-11-1995. Therefore, after hearing the Departmental Representative we proceed to decide this appeal on the basis of the submissions made in the Memorandum of Appeal.

3. The appellant had claimed classification of the contact lens solution under Heading 3402.90. The Assistant Collector had approved the classification, so claimed. On appeal by the Department against this approval, the Collector (Appeals) held that the product was classifiable under sub-heading 3307.90. The present appeal is against this order.

4. The appellant's claim that Note l(c) to Chapter 34 does not include cleaning preparations has no relevance to the issue. It is further claimed that the contact

lens solution manufactured by the appellant is only for cleaning contact lenses and cannot, therefore, be considered to be a product of the care of the eye. The appellant claims that the product referred to in Note 3 to Chapter 33 refer to such kind of solution which can be poured directly into the eye for the purpose of cleaning lenses, whereas the product manufacured by the appellant is used in contact lenses after the lenses are taken out from the eye. The appellant has not cited any evidence in support of its claim that there are two kinds of solutions : one which can be poured directly into the eye, and another which is used for cleaning lenses after they are taken out from the eye. This argument is, therefore, not acceptable. The claim that contact lens solution is not acceptable by the trade as a cosmetic or toilet preparation has not been supported; in any case we are not able to see the relevance of this argument as it has not been so classified. The product is specifically included in Note 3 to Chapter 33. It is also seen from the classification list that the product is marketed in packing which contains from 30 ml to 250 ml of the product. In the light of this, and the absence of any argument to say that the goods are not put up in such a manner that they would not be covered by the provisions of the Note 2 of the Chapter 33, it has to be held that the classification arrived at by the Collector (Appeals), is correct.

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