

Eupharma Laboratories Vs. Collector of Central Excise

Eupharma Laboratories Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/9406

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-1996

Reported in : (1996)(86)ELT47TriDel

Appellant : Eupharma Laboratories

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against Order-in-Appeal No. F. No. V-2 (14E) 348/R/88 of Collector (Appeals), Bombay.
2. The issue relates to classification of "Sulphacetamide Eye Drops B.P.L. 20%.
3. Arguing for the appellants the Ld. Advocate submits that in the Show Cause Notice issued to them the department had proposed to classify the impugned product under sub-heading 3003.19 of Central Excise Tariff.

They have, however, contended that their products were medicaments (other than patent or proprietary) other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems and were, therefore, correctly classified under Heading 3003.20 under which duty chargeable was nil. This was accepted by the Deputy Collector vide his order dated 19-10-1987 who dropped the proceedings after holding that these phar-macopoeial products are classifiable under sub-heading 3003.20. Against this order of the Deputy Collector an appeal under Section 35E(4) of the Central Excise Act was filed by the

Revenue before the Collector (Appeals). The appeal was filed on the ground that these pharmacopoeial products are cleared in the "Medicine Kits" and as per Note 3 of the Central Excise Tariff Act, 1985 effective from 28-2-1986 the first aid boxes and kits are classifiable under sub-heading 3005.00 and chargeable to duty at 15% ad valorem. Though the impugned product is a pharmacopoeial product since it has been packed in "Medicine Kits" it would be classifiable only under sub-heading 3005.00.

4. Collector (Appeals) has held that if the impugned goods are cleared separately then they are classifiable under sub-heading 3003.20. But since the assessee cleared these products in corrugated boxes the product in question is correctly classifiable under sub-heading 3005.00 chargeable to duty. Revenue appeal, therefore, was allowed by Collector (Appeals).

5. Ld. Advocate submits that Chapter Note 3 is not applicable in their case since these are not first aid boxes and kits. Admittedly the cartons bear the legend "Medicine Kits". But the product Sulphacetamide Eye Drops B.P.L. 20% were supplied for I.C.D.S. Scheme (Government Supply and not for sale) in corrugated boxes. Other medicines like liquid paraffin, dusting powder, bellodonna, etc. are not basically first aid medicines. In any case he submits that the question of classification under sub-heading 3005.00 was never the subject matter of proceedings at the original stage. Show Cause Notice was issued only for classification under 3003.19 and Deputy Collector accepted their claim of classification under sub-heading 3003.20. They were never put to notice in regard to classification under sub-heading 3005 and, therefore, could not defend their claim against such a classification.

This classification was raised for the first time by the Revenue in the Review proceedings and, therefore, Collector (Appeals) ought not to have considered this classification.

6. Ld. DR reiterated departmental arguments and submits that since the impugned products were cleared along with other products in a kit they were rightly classifiable under sub-heading 3005.00 by virtue of Chapter Note 3 of Chapter 30. They also do not appear to have raised such objection and in this connection

refers to Para 3 of the order-in-appeal.

7. We have heard both sides. We find that while the Show Cause Notice proposed classification of the product under sub-heading 3003.19 Deputy Collector accepted their contention and dropped the proceedings holding that the goods are classifiable under 3003.20. It is only through Review Order issued under Section 35E(2) that Revenue for the first time proposed classification under Tariff Heading 3005.00. We find that the appellants were never put to notice in regard to proposed classification. In the circumstances, Collector (Appeals) could not have possibly decided the impugned products under that tariff heading since no notice in regard to proposed classification under 3005.00 was given to the appellants.

We find that on this ground alone the impugned order is vitiated and is not sustainable. We, therefore, without going into the merits of the case, set aside the impugned order-in-appeal relating to period 31-3-1986 to 30-6-1986. We, however, make it clear that this would not prevent the Department to take necessary steps under the law for determination of correct classification of the impugned goods for the period other than the period involved in the present appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com