C.C.and C.Ex., Indore Vs. M/S Sanctus Drugs and Pharma Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Central Excise Appeal No.695 of 2008-SM

Appellant : C.C.and C.Ex., Indore

Respondent : M/S Sanctus Drugs and Pharma Ltd.

Advocate for Pet/Ap. : Shri R.K. Saini, Authorized Departmental Representative (JDR) for the Revenue and none for the respondent.

Judgement :

Per M. Veeraiyan:

This appeal by the Department is against the order of Commissioner (Appeals) No.IND-1/04/2008 dated 8.1.2008.

2. Heard the learned DR. None appears for the respondent in spite of notice.

3. It appears that (based on an order dated 18.6.97 issued by Mumbai Customs authorities) there was customs duty demand of Rs.1,22,131/- pending recovery from the respondent and that the Commissioner Customs (Import) has issued advice to Customs and Excise formations for recovery of the said amount. The Customs authorities, Mumbai also initiated proceedings for recovery which has

been challenged by the respondent before the Hon ble High Court of Madhya Pradesh and an order dated 12.11.2007 has been issued containing certain directions.

4. In another matter, the respondent has been sanctioned a refund of Rs.one lakh by Deputy Commissioner, Central Excise Division, Pithampur and in view of recovery proceeding initiated by Mumbai Customs Authorities in respect of Customs duty pending for over a decade, the said amount was adjusted by the original authority towards the dues.

5. On appeal, the Commissioner (Appeals) has set aside the order of the original authority and directed the Department to give the amount of Rs.one lakh to the party by way of cheque at an early date.

6. Learned DR after narrating the sequence of events as above reiterates the grounds of appeal.

7. There is no dispute about the eligibility of refund of Rs.one lakh sanctioned to the respondent. Dispute relates to the adjustment of said amount towards customs duty said to be due from the respondent in pursuance of the order passed on 18.6.97 by Mumbai Customs authorities.

8. The Commissioner (Appeals) has allowed the refund with the following findings:

“5. On a careful consideration of the written and oral submission made by the appellants, I find the dispute in the present appeal relates to the appropriation of the refund amount of Rs.one lakh against a purported demand of customs duty of Rs.1.22lakhs. The appropriation has been done without any notice to the apellants and therefore, probably they could not explain to the adjudicating authority the details of the case relating to the Customs duty demand. Based on the factual position narrated by them in the appeal memo. I find that with reference to the import done by them in 1996 the requisite end use certificate has been issued by the excise authorities in 1997 itself and that it was also submitted to the Customs authorities in December, 1997, whereas the order for demand of the Customs duty was made in June, 1997 itself. Therefore, in my opinion no recovery can be made from them based on the order dated 18.6.97. Moreover, the question whether the order dated 18.6.97 has been served on them is under dispute and based on the High Court order dated 12.11.07 the appellants have a right to go in appeal against the order dated 18.6.97 before the concerned appellate authority. Also as the relevant end use certificate has been issued by the local excise authorities in 1997 itself the Adjudicating authority should not have proceeded to appropriate the refund against the Customs duty demand, without causing relevant enquiries in this regard with the appellants as well as from the records of the Department.

6. In view of the discussion above, I hold that the appropriation of the refund amount is not proper and hence the Deputy Commissioner, Pithampur Division is directed to give the amount of Rs.one lakh to the appellants by way of a cheque at an early date. It is needless to add that the appellants would be eligible for interest for the delay in payment in terms of Section 11BB of the Act read with the order of the Tribunal dated 5/12.04.2007 and the Board s Circular F.No.802/35/2004-CX dated 8.12.04."

9. It is seen that the Commissioner (Appeals) has not approved the adjusting the refunded amount towards dues said to be pending from the respondent in the light of directions of the Hon ble High Court as recorded above. In view of High Court decision dated 12.11.2007, the Department was required to take certain action and the outcome of the same is not known. The Commissioner, Indore should have taken appropriate action through the Commissioner, Nhaba Sheba for complying with the direction of the Hon'ble High Court.

10. When the direction of the Hon ble High Court was to ascertain the facts of the delivery regarding the order dated 18.6.97 and to grant time for fling of appeal against the said order upholding recovery proceedings as done by the original authority may not be appropriate.

11. No valid reasons have been adduced to interfere with the order of the Commissioner (Appeals). The appeal is therefore, rejected.