Sterling Lab Vs. Commissioner of Central Excise, Chennai

Sterling Lab Vs. Commissioner of Central Excise, Chennai

SooperKanoon Citation : sooperkanoon.com/943930

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jun-21-2011

Judge : The Honourable Ms. Jyoti Balasundaram, Vice-President &Amp; the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.E/943/2004 [Arising out of Order-in-Appeal No.70/2004 (M-III) dt. 16.4.2004 passed by

Appellant : Sterling Lab

Respondent : Commissioner of Central Excise, Chennai

Advocate for Pet/Ap. : For the Appellant: R. Janardhanan Pillai, Consultant. For the Respondent: Parmod Kumar, SDR.

Judgement :

Per Jyoti Balasundaram

1. The issue in dispute in the present appeal is the correct classification of “Helmisol” manufactured by the assessees herein - whether as preparations of a kind used in animal feed under Tariff Heading 23.02 as claimed by the assessees or under Tariff Heading 30.03 as medicaments as held by the Revenue.

2. We have heard both sides. We find no merit in the claim of the assessees regarding classification of the product for the reason that there is no evidence on record to show that the product is commonly known as animal feed supplement in

the market and further the assessees had themselves classified the product under Tariff Heading 30.03 and had obtained a drug licence for the same until 22.7.2002 and they subsequently changed the classification to Tariff Heading 23.02 although there was no change in the composition of the product. We, therefore, uphold the order on classification. As regards the penalty of Rs.10,000/- imposed under the provisions of Rule 25 of the Central Excise Rules, 2002, we are of the view that penalty is justified in view of the clear finding that the assessees changed the classification of the product, adding the words “poultry feed supplement” on the label and deleting the drug licence number which is with a view to evade payment of appropriate duty under Tariff Heading 30.03. However, in the facts and circumstances, and having regard to the duty demand of Rs.65,567/- confirmed, we reduce the penalty to Rs.6500/- (Rupees Six thousand five hundred only). The penalty of Rs.5000/- imposed under Rule 13 of the CENVAT Credit Rules, 2002 is upheld for the reason that 8% amount of the price, since they are manufacturing both dutiable and exempted products, was reversed by them only after issue of show cause notice.

3. The appeal is thus partly allowed as above.