

Customs, Excise and Gold Tribunal - Mumbai

Sangko Pharmaceuticals vs Commissioner Of Central Excise on 26 October, 2005

Equivalent citations: 2006 (107) ECC 634, 2006 ECR 634 Tri Mumbai

Bench: A Wadhwa, S T S.S.

ORDER S.S. Sekhon, Member (T)

1. The appellants are a registered SSI Unit interalia engaged in the manufacture of medicaments falling under chapter 30 of Central Excise Tariff Act at the initial stage. They contracted out to engage the factory to a loan licence manufacturer since they did not have sufficient infrastructure for manufacture and marketing of their own products, in the year 1988 M/s Cross Land Research Lab (hereinafter referred to as CRLI for brevity) was one of the loan licensee and non SSI unit who utilized the factory of the appellant to manufacture with their own raw material, packing material & supervision and control products I) Estrogesic & ii) Statuin-V approved by the food & Drug administration by allotting license no 2966A. Similarly in the year 1989 CRLI got other products also registered with Food & Drug administrator these products were I) Extrogesic A.F. ii) Mobinak for manufacture as loan licensee.

2. a) The production and clearance of the products under the provision of Rule 70(A) of Drugs & Cosmetics Act 1940 was effected as loan licensee; Classification list were filed by CRLI under Rule 173B of Central Excise Rules 1944 from time to time and got approved. The claim of SSI Exemption under notification 175/86 dtd 1/3/86 along with supporting documents viz certificates issued by the Directorate SSI for factories at I) Thanjawar, ii) Jejuri iii) Silvasa on provisional basis duly supported by the certificate issued by the concerned Superintendent were claimed, such claim in classification list were approved by the A.C.C.Ex Mulund and bearing Nos. 3/89/90, 146/88/89 & 4/89/90. Mobinak being a single ingredients formulation was exempted in excess of 10% duty vide notification No. 29/88 prior to issue of show cause cum demand notice dtd 4/5/94.

b) Three show cause cum demand notices were issued by the Range Superintendent C. Excise dtd 2/7/93 for the period 12/92 to 3/93, dtd 1/11/93 for the period 3/93 to 9/93 & dtd 8/4/94 for the period 10/93 to 4/94 on the same and identical grounds. These notices were heard & dropped by A.C.C. Ex Mulund vide his order in original No. 502/503/97/98 dtd 28/11/97. However the notice dtd 8/4/94 issued by the Superintendent was not covered by the said order as the file was not available in the A.C. office.

c) Thereafter this fourth show cause cum demand notice dtd 4/5/94 was issued by the Commissioner of Central Excise covering the period April 89 to November 92 demanding differential duty under Section 11A(1) of the Central Excise Act 1944 read with Rule 9(2) of Central Excise Rules 1944 and for penalty under Rule 173Q and Rule 209A ibid. The notice alleged that M/s G.H.C.P.L in connivance of the appellant I) obtained provisional SSI certificates though M/s GHCL had no factory of SSI anywhere in India as per the balance sheets, which was supported by the statements of the Directors of M/s GHCL., recorded Under Section 14 of the C.Ex Act. II) the products Extragesic A.F. and mobinake (Exh.B) were belonging to M/s CRLI were manufactured by the appellant on behalf of M/s GHCL. Therefore the appellant was not eligible for Exemption under notification No. 175/86. The appellant therefore, contravened the provisions of C.Ex. Rules &

notification No. 175/86.

d) Replies to this fourth notice were filed however the Commissioner confirmed the duty demand and imposed penalty of Rs. 10 lakhs on the appellant and Rs. 5 lakhs on the loan licensee. The appellants filed appeal with CEGAT Mumbai bearing Nos. E/1220R& 1227R/97 & these appeals came to be decided vide order No. C/I/836/1838/WRB/03 dtd 21/8/03. The Tribunal held that matter was required to be remanded back to the Commissioner after fresh decision considering that the order filed by the Honourable High Court Gujarat 1990 (50) ELT 210. Personal hearing was thereafter held the Commissioner vide the order now impugned rejected the submissions confirm the duty demand and also confirm the penalties as held in the earlier order. Hence the present appeal.

3. Heard both sides & considered the material and it is found

a) the present notice dtd 4/5/94 on similar issues, three show cause cum demand notices were issued by the Range Superintendent C. Excise dtd 2/7/93 for the period 12/92 to 3/93, dtd 1/11/93 for the period 3/93 to 9/93 & dtd 8/4/94 for the period 10/93 to 4/94. Therefore the demands made herein are as barred by limitation. In view of the facts of the issue and adjudication of demand notices for the subsequent period issued earlier and determined and decided by the Asst. Commissioner vide his order dtd 28/11/97, in favour of the appellant, Following the decision in the case of M/s ECE Industries Ltd. , the demands cannot be upheld.

b) The issue of liability of a manufacture of medicaments under loan and licensee agreement is now well settled after such manufacture takes place on what is understood as job work than a appellant owning & conducting and such manufacture on behalf of another principle suppliers of raw material would be a manufacturer however manufacture under loan licensee as understood by the Foods & Drugs Administration under their relevant law could be manufacture arrived at by the present other than the owner of the factory premises i.e. the owner of the raw material who supervises such manufacturer. In the proceeding before us, there is no material and or allegation against the appellants herein. The duty demands & thereafter the penalties arrived are on the appellants cannot be therefore upheld. The appeal is therefore to be allowed. Ordered accordingly.

(Pronounced in the Court)