

SUPREME COURT OF INDIA

Collector of C. Ex., Ahmedabad

Vs.

Cadila Laboratories (P) Ltd.

(B.N. Kirpal and K.G. Balakrishnan JJ.)

22.11.2001

ORDER

1. The respondents are engaged in the manufacture of patent or proprietary medicines. During the period 9th January, 1984 and 23rd July, 1984 they manufactured such medicines out of imported raw material known as Cimitidine. They claimed exemption to the extent of Rs. 7,28,966.24 p. in respect of duty paid by them under Section 3 of the *Customs Tariff Act, 1975*. The exemption was sought under Notification No. 144/65-C.E., dated 4th September, 1965. .

2. Both the Assistant Collector and the Collector rejected the claim for exemption inter alia on the ground that the respondent had not followed the procedure laid down by Rule 56A of the Central Excise Rules, 1944.

3. The Tribunal by a process of reasoning side tracked this issue and came to the conclusion that the respondent is entitled to the benefit of the substantive part of Rule 56A. The Tribunal did not hold that the procedure laid down in Rule 56A had been followed by the respondent.

4. We have heard the Counsel for the parties. The exemption is sought under the aforesaid notification which was issued under Rule 8(1) of the Central Excise Rules. Though this notification was issued in 1965 a proviso was inserted with effect from 1st August, 1980, in this notification which reads as Follows:

"Provided that in relation to the exemption under this notification, the procedure set out in Rule 56A of the aforesaid rules is followed."

5. It is evident that a pre-condition to the entitlement of exemption is the following of the procedure under Rule 56A, Rule 56A(1) provides that the Central Government may by notification in Official Gazette specify the excisable goods in respect of which procedure laid down in Sub-rule (2) shall apply. The procedure which is provided by Sub-rule (2) contemplates an application being made to the Collector for permission to manufacture excisable goods specified in Sub-rule (1) and to receive material or component parts and use the same in the manufacture. It is not in dispute that no application was made to the Collector as provided by Rule 56A. Even if, there was a right with the respondent to get exemption for

the amount of customs duty paid under Section 3 of the Customs Tariff Act, 1975, the law enjoined that the procedure stipulated in Rule 56A had to be followed. Learned Counsel for the respondent has not been able to bring to our notice any material to show that this procedure was followed. The Tribunal, was therefore, wrong in allowing the appeal of the respondent and directing that the benefit of the said notification be given to it.

6. For the aforesaid reasons, this appeal is allowed and the impugned decision of the Tribunal is set aside. No costs.