

SUPREME COURT OF INDIA

Superintendent of Central Excise

Vs.

D.C.I. Pharmaceuticals Private Limited

C.A. No. 5247 of 2003

(C.K.Thakker and Ruma Pal and Arijit Pasayat JJ.)

22.02.2005

ORDER

1. The question raised in this appeal is whether the respondent is entitled to the benefit of Notification 175 of 1986. That Notification granted certain benefits to small scale industries provided that they did not use the brand name of a third person who was not entitled to the exemption as a small scale industry under the Notification. Irrespective of the question whether the respondent should in fact be entitled to the benefit of the Notification or not we are of the view that this appeal is not sustainable at the instance of the Department for the reason that there is a decision of the Tribunal pertaining to the very same respondent in respect of the very same period which has held that the respondent is entitled to the benefit of the Notification. This has happened because the respondent had submitted a classification list in respect of its product known as "Betnor" for approval on 6-5-1991. Before the Classification list was approved the respondent cleared its goods claiming the benefit of Notification 175/86. The Department rejected the classification list and raised a demand on the respondent for the period 1990-1992 before the Assistant Collector. The respondent's contention that it was entitled to the benefit of the Notification, was accepted. The Commissioner, however, allowed the Department's appeal. The matter came up before the Tribunal and the Tribunal in no uncertain terms affirmed the finding of the Assistant Collector and set aside the demand against the respondent. This decision has not been challenged by the Department.

2. In the meanwhile, the controversy regarding the classification list came up before the High Court. The High Court was also of the view that the respondent was entitled to the benefit of the Notification albeit for grounds which are independent of the decision of the Tribunal. The appellant now seeks to challenge the decision of the High Court. In our opinion, since no appeal has been preferred from the decision of the Tribunal in the related matter for the same period, it is not open to the appellant to agitate the issue collaterally. The appeal is accordingly dismissed leaving the question of law open, without any order as to costs.

In C.A. No. 5247/2003:

3. Having regard to the fact that the Revenue involved is only Rs. 50, 000/ (approximately) we do not think that we should interfere with the decision of the Tribunal. The appeal is accordingly dismissed leaving the question of law open.