

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/139/2009

(Arising out of Order-in-Appeal No. 43/2008 (M-IV) dated 14.09.2008 passed by the Commissioner of Central Excise (Appeals), Chennai).

CCE, Chennai-IV

Appellant

Vs.

M/s. Tanmed Pharmaceuticals Ltd.

Respondent

Appearance

Shri S. Govindarajan, AC (AR)
for the appellant

Shri M. Karthikeyan, Advocate,
for the Respondent.

CORAM :

Hon'ble Smt. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **09.10.2017**

FINAL ORDER No. 42344 /2017

Per: Bench

The facts of the case are that M/s. Tanmed Pharmaceuticals Ltd., (herein after referred to as respondent) are manufacturers of certain goods under brand names "Mucosat, Nurofit , MOD Caps, Kalpadyn-MC, Nerosafe etc., which were being cleared by them

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under Chapter heading CETA 3003.10 and adopted transaction value under Section 4 of the Central Excise Act, 1944. The department took the view that the products are Dietary supplement/Nutritional supplement which would merit classification under CETA 2809.99 attracting miscellaneous MRP based assessment under Section 4A *ibid*. Accordingly, a SCN dated 31.08.2005 was issued to the respondent, *inter alia*, proposing that the subject goods should be re-classified under CETA 2108.99 as miscellaneous edible preparations and subjected to MRP based assessment. Differential duty of Rs. 11,38,956/- along with interest liability was also proposed, as also penalties under various provisions of law. In adjudication, the original authority vide an order dated 30.12.2005 confirmed these proposals made in the SCN and imposed penalty under Section 11 AC *ibid*. On appeal, the Commissioner (Appeals) vide the impugned order dated 14.09.2008, *inter alia*, held that the impugned products are classifiable under CETA 30.03 as "medicaments" and set aside the demand of Central Excise duty and penalty imposed. Aggrieved, department is before this forum in appeal E/139/2009.

2. Today when the matter came up for hearing, the Ld. AR, Shri S. Govindarajan, AC, submits that these items are commonly known and sold as food supplements and dietary supplements. He submits that the respondent did not possess the product license of the subject goods and in fact their application for grant of such



license has been denied by the Drug Control authorities except one item. He reiterated the grounds of appeal.

3. On the other hand, the Ld. Advocate, Shri M. Karthikeyan, appearing on behalf of the respondent submits that the items although named as dietary supplement is sold only through pharmacy against prescription. He relies upon the ratio of the decision in the case of *Softesule Ltd. Vs. CCE, Mumbai* – 2002 (146) ELT 418 (Tri.-Mum.), which was the appeal against by the department was dismissed by the Hon'ble Supreme Court reported as 2003 (156) ELT A212 (S.C.). He also relies upon the ratio of the Supreme Court judgment in *CCE, Mumbai Vs. Capsulation Services Ltd.* – 2007 (216) ELT 346 (S.C.). He also draws our attention to the HSN notes under Chapter heading 2106, viz., "food preparations not elsewhere specified or included", wherein Note 16 clarifies that preparations preferred as food supplements based on extracts from plants, food concentrates, honey, fructose and contains added vitamins etc., would come under that heading; that however, similar preparations intended for prevention or treatment of diseases or ailments are excluded and would require to be classified under the heading 30.03 or 30.04.

4. Heard both sides and have gone through the case records.



5.1 The core issue that comes up for decision concerns the classification of the products sold by the appellant under various names, eg., Nerocare, Nurolfort, Nerofit, Neurotone etc.

5.2 It appears that the controversy has emanated since labels on some of the respondent's products bear the tag "dietary supplement". However, a closer look at the xerox copies of such labels available in the appeal paper book indicates that all these products are basically multi-vitamins except MOD caps, which again are Methylcobalamin capsules, the pharmaceutical name for Vitamin-B12.

5.3 For an item to merit classification under 2108, they should be "other edible preparations not elsewhere specified or included". A close look at the sub-headings thereunder will indicate that items in the genre of edible preparations like lemonades, sharbat etc., find place thereat. The requirement of being "edible" is a prime necessity for attracting classification under 21.08. This being so, by no stretch of imagination, a product containing a bevy of vitamins, pharmaceutically produced and not even alleged to be a plant /fruit based extract, would merit classification under 21.08.

5.4 The Tribunal in the case of Softesule Ltd. (supra), had occasion to go into an identical matter. The products under dispute therein were mixtures of vitamins and minerals manufactured with proper FDA approval. The Tribunal in that case

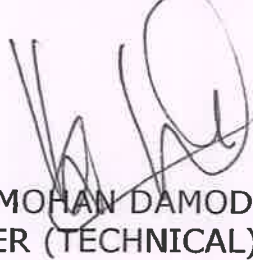




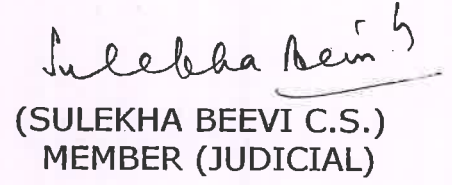
held that the impugned goods were classifiable under CETA 3003.10 and not under 2108.99 ibid. As cited by the Ld. Advocate, this decision has now reached finality at the Hon'ble Supreme Court level.

6. In the light of the discussion herein above and in particular, following the ratio laid down in the Softesule Ltd. judgment, we do not find any merit in the appeal filed by the department, for which reason the same is dismissed.

(Order dictated and pronounced in the Open Court)



(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

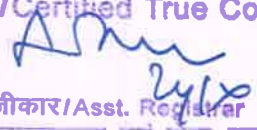


(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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