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

C/499/2005

(Arising out of Order-in-Appeal No. 496/2005 dated 27.07.2005 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Biocon Ltd. : Appellant

Vs.

CC (Port – Export), Chennai : Respondent

Appearance

Shri N. Anand, Advocate
for the appellants

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

Hon'ble Smt. SULEKHA BEEVI C.S., Member (Judicial)
Hon'ble Shri B. RAVICHANDRAN, Member (Technical)

Date of Hearing/Decision: **13.09.2017**

FINAL ORDER No. 42065 **/2017**

Per: B. Ravichandran

The appeal is against the order dated 27.07.2005 of the Commissioner (Appeals), Customs, Chennai. The appellant imported bulk drug called "Micronized Progesterone BP" and claimed benefit of concessional rate of duty under Sl.No. 80 (A) of the Notification No. 21/2002-Cus dated 01.03.2002. The Revenue contended that the appellants are not eligible for such concession

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and the product should be treated for assessment under Sl.No. 80 (B) of the said notification. The Sl.No. 80 (B) is available only with a condition of following the procedure set out under 1996 Rules. Since the appellant did not comply the said condition, the concessional rate of duty was disallowed.

2. The Ld. Counsel appearing for the appellant submitted that the product imported by them is admittedly "Micronized Progesterone BP" which is specifically finding place in list 3 of the said notification under Sl.No. 58. In such a situation, there is no ambiguity in their claim for the concession. He relied upon the following decisions of the Tribunal in support of his contention.

a. *CIPLA Ltd. Vs. CC, Chennai*
2007 (218) ELT 547 (Tri.-Chen.)

b. *CCE, Hyderabad Vs. Hetero Drugs Ltd.*
2010 (262) ELT 490 (Tri.-Bang.)

c. *DR. Reddy's Laboratories Ltd. Vs. CCE, Hyderabad*
2010 (251) ELT 447 (Tri.-Bang)

3. Ld. AR for the Revenue opposed the appeal. He submitted that the goods imported by the appellants are in bulk form and they are not intended for retail sale.

4. We have heard both sides and perused the appeal records.

5. The dispute is between two entries as mentioned below:-

80 28,29 or 30 The following goods namely:-

(A) Drugs or medicines specified in list 3

(B) Bulk drugs used in the manufacture of the drugs or medicines at (A) above.

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The entries against Sl. No. 80 of the Table annexed to Notification No. 21/02-Cus. are as follows :-

S.No.	Chapter or Heading No. or sub-heading No.	Description of Goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
80	28, 29 or 30	The following goods, namely :-			
		(A) Drugs, medicines, diagnostic kits or equipment specified in List 3	5%	-	-
		(B) Bulk drugs used in the manufacture of drugs or medicines at (A) above	5%	-	5

We note that the product imported by the appellants is assessed as "Micronized Progesterone BP" . There is no dispute on this. The form of import being bulk, the Revenue contends that it should be under 80 (B). We note that the impugned goods covered by Sl.No. 58 of List 3 is specifically covered under 80 (A). In a similar set of facts, the Tribunal while interpreting identical entries for claim of concession, in the case of CIPLA Ltd. (supra) observed as below:-

> "5. In the instant case, admittedly, the 'bulk drugs' imported by the appellants were specifically mentioned in List 3 appended to Sl. No. 80(A) of Customs Notification No. 21/02 and are liable to be considered as 'drugs' mentioned at 80(A). It is beyond doubt that 'bulk drugs' are also 'drugs'. They are so defined under the Drugs (Prices Control) Order, 1995 also. The imported goods, which are specified in List 3, must fall within the coverage of 'drugs specified in List 3' and consequently the benefit of Sl. No. 80(A) would be admissible to them in relation to BCD. It would follow that, insofar as CVD is concerned, the benefit of Sl. No. 47(A) of the Central Excise Notification would be available to the goods. We have taken this view upon strict interpretation of the language used in the description of goods under the relevant entries of the Notification, in terms of the Apex Court's ruling in *Gujarat State Fertilisers Co.* v. *CCE* - 1997 (91) E.L.T. 3 (S.C.) and other cases cited by learned DR. In the result, all the appeals filed against the appellate Commissioner's order on merits are bound to succeed.

6. We note that the ratio of the above decision is squarely applicable to the facts of the present case. Accordingly, following

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the above decision we hold that the impugned order is not sustainable, the same is set aside and the appeal is allowed.

(Dictated and pronounced in open Court)

(B. RAVICHANDRAN) 14917
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

BB

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