(2000) 11 CAL CK 0019

In the Calcutta High Court

Case No : APO No. 521 of 1994 and Matter No. 2888 of 1993

Assistant Collector of C. Ex. APPELLANT

Vs

East India Pharmaceutical Works Ltd. RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35K
Constitution of India, 1950 — Article 226

Citation : (2002) 141 ELT 57

Hon'ble Judges : Ashok Kumar Mathur, C.J;Ronojit Kumar Mitra, J

Bench : Division Bench

Advocate : L.K. Chatterjee, for the Appellant;Sanjay Kumar Baid, for the Respondent

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, C.J.—This appeal is directed against the order dated 28th January, 1994 passed by the learned Single Judge whereby the learned Single Judge has allowed the writ petition and held that the petitioner is entitled to exemption of Excise duty in regard to cough syrup "Kafbin" (An Ayurvedic, preparation) under Notification No. 32/89-C.E., dated 1-3-89 and further quashed the order of the Assistant Collector and directed the appellant to permit the respondent to clear their entire consignment of "Kafbin" from their factory without any let or hindrance and without imposition of any excise duty until, of course the time, if ever, the exemption is withdrawn, or the petitioner happens to change the constitution of "Kafbin" so as to render it non-ayurvedic.

2. Aggrieved against this order the present appeal has been preferred by the appellant. The brief facts which are necessary for the disposal of the appeal are that the Assistant Collector, Central Excise by its order dated 23-6-1993 disallowed the claim for exemption for the cough syrup "Kafbin" claimed by the petitioner to be an Ayurvedic medicine. Under Tariff Item No. 3003.10 of Chapter 30 of the Tariff Act of 1985 the following entry appears :

"Heading No. Sub-heading No. Description of goods Rate of duty

1 2 3 4

30.03 3003.10 Patent of proprietary medicaments other than those medicaments which are exclusively Ayurvedic, Unani, Homoepathic or Biochemical." 15%

3. As per this entry exclusively the Ayurvedic preparations are not subject to tariff. Therefore, the respondent claimed the benefit under this notification which was not given by the authorities on the ground that this Ayurvedic preparation contains some of the Allopathic constituents like Sodium Benzoate, Propyl Parabgan and Methyl Tarabe. Therefore this preparation is subject to duty though the respondent tried to give certificate of one Kaviraj Shibaprosad Goswami and J.B. Roy of State Ayurvedic Medical College and Hospital that the above three Allopathic constituents in "Kafbin" are mere preservatives and do not have any medicinal value. Despite that the Assistant Collector, Customs held it otherwise on the ground that since some of the constituents of this Ayurvedic preparation contains Allopathic constituents therefore they are subject to tariff. This was challenged by the petitioner by filing the present writ petition without resorting to regular remedy of appeal available under the statute. The learned Single Judge overruled the objection and addressed himself to the merit of the case and held that these Allopathic constituents do not make any difference to the Ayurvedic preparation and held that the present Ayurvedic preparation is not exigible to tariff. The approach of the learned Single Judge was not correct. He should not have interfered and better have left the matter to the Appellate Authority to adjudicate specially where such disputed questions are involved in the matter. However, now the controversy has been resolved by the Board of Taxes and clarified the position by issuing circular wherein this question was examined by the Board and the Board held :

"4. Having regard to the above, the Board is of the view that the benefit of exemption under S. No. 3 of Notification No. 75/94-C.E. should not be denied to Ayurvedic medicines if they are manufactured in accordance with the formulae prescribed in the authoritative text books and sold under the generic name mentioned in the said authoritative text books but contain preservatives, inner excipients, binding agents etc. not having any therapeutic value. In such cases the assessing officers may obtain a certificate to be produced by the manufacturers from the appropriate Drug Authorities that the drug satisfies the following conditions :-

(a) The medicament has been prepared in accordance with the formulae prescribed in the authoritative text books; and

(b) The ingredients added, other than those prescribed in the authoritative text books, should not have any therapeutic value.

Needless to say that for availing the benefit of exemption, the Ayurvedic medicament should be sold under the generic name as specified in the authoritative text books.

5. Pending cases on this issue, if any, may be disposed off accordingly. (Based on C.B.E. & C. Circular No. 196/30/96-CX, dated 3-4-1996)"

4. According to this clarification issued by the Board it appears that in such cases the concerned manufacturer should obtain a certificate from the appropriate authority that the drug satisfies two conditions (a) the medicament has been prepared in accordance with the formulae prescribed in the authoritative text books; and (b) the ingredients added, other than those prescribed in the authoritative text books, should not have any therapeutic value. After this certificate is obtained by the party then the Taxing Authority may exempt the preparation from the tariff. The learned Counsel has submitted that the decision of the Board is binding on the subordinate authorities. In support of this contention the learned Counsel has invited our attention to a decision of the Apex Court in Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd., wherein it has been held that the circular issued by the Central Board of Excise and Customs is binding on the sub-ordinate authorities. Therefore, we set aside the impugned order and direct that the petitioner may obtain a certificate as contemplated in the circular of the Board dated 3-4-96 and the same may be submitted to the authorities and if the authorities are satisfied then they may grant necessary relief to the respondent in accordance with law. The appeal is allowed. There will be no order as to costs.

