

(2003) 03 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal No. 3557 Of 2000 With Nos. 76-77 Of 2003

Calcutta Chemicals Co. Ltd.

APPELLANT

Vs

Commissioner of C. Ex., Chennai

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : (2003) 88 ECC 229 : (2003) 154 ELT 326 : (2005) 10 SCC 573

Hon'ble Judges : S. N. Variava, J;B. P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These two appeals are against the orders of the Customs, Excise and Gold (Control) Appellate Tribunal (For short 'the CEGAT') dated 14th March, 2000 and 9th October, 2001. The point involved in both these appeals is whether the appellants are entitled to benefit of Notification No. 75 of 1994, dated 29th March, 1994. This Notification exempts from payment of duty medicaments used in, amongst others, Ayurvedic preparation manufactured in accordance with the formula prescribed in Ayurvedic books specified in the First Schedule to the Drugs and Cosmetics Act, 1940, or Homeopathic Pharmacopoeias and sold under the name specified in such books or pharmacopoeia. The Tribunal has held, in both the orders, that the appellants are not entitled to the benefit of this Notification.

2. The admitted facts are that the appellants are manufacturing Maha Bhringaraj oil which is an Ayurvedic preparation. It is not disputed that this manufacture is in accordance with the formula prescribed in the authoritative books. The appellants have however been denied the benefit of Notification on the ground that they are selling the product as "Maha Bhringol" which is not the name specified for this product in the books or pharmacopoeia.

3. It is submitted that the Notification does not prevent a party from using any other mark or symbol or monogram or invented words. It is submitted that mere

use of additional words would not deprive a party of the benefit of the Notification. It is submitted that the word "Maha Bhringol" is not a trade or a brand name and that the appellants do not have any proprietary right to these words. It is pointed out that the appellants have filed an affidavit to this effect. Reliance is also placed upon a Trade Notice wherein it has been clarified as to which product is covered by Notification. The Trade Notice states by way of example :-

"The following four situations will make it more clear:

(a) Chavanprash is prepared as per ayurvedic text book and sold also as "Chavanprash" without any indication as to who the manufacture is;

(b) Chavanprash is prepared as per ayurvedic text books. It is sold as Chavanprash but the manufacturer's name or mark, logo, symbol etc. is also prominently displayed.

(c) "Chavanprash" is prepared as per the ayurvedic text books. It is, however, sold under a brand name and but not sold as "Chavanprash". For example, it is sold say as "Kesri Jivan".

(d) "Chavanprash" is not prepared as per the ayurvedic text books but using some other formulas,"

4. It is submitted that the case of the appellants falls squarely under Clause (b) above. It is submitted that they are selling "Maha Bhringraj Oil". It is submitted that they are merely adding the words "Maha Bhringol". It is submitted that this is permissible as per the clarification issued in the Trade Notice.

5. We have seen the wrappers of the product. We have also seen the classification list filed by the appellants. Both the wrappers and the classification list show that the product is being sold as "Maha Bhringol". The words "Maha Bhringol" are in very bold letters. Thereafter in a smaller type the words Maha Bhringraj Oil are also used. However what has to be seen is how the product is sold. The classification list shows that the product is being sold in the name of "Maha Bhringol". Admittedly this is not the name of the product in the Ayurvedic Book or in pharmacopoeias. In our view, it is irrelevant whether the words "Maha Bhringol" is a brand or trade name or not. So long as the product is sold under the name "Maha Bhringol", the benefit of the Notification would not be available as it is not the name given in the books or pharmacopoeias.

6. We therefore, see no infirmity in the judgments of the Tribunal. The appeals are accordingly dismissed. There shall be no order as to costs.