(2015) 05 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 4483 of 2005

Commissioner of Central Excise APPELLANT

Vs

Dabur India Ltd. RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A

Citation : (2015) 05 SC CK 0019

Hon'ble Judges : A.K. Sikri, J;Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, Rupesh Kumar, P.K. Mullick, Sadhana Sandhu and B. Krishna Prasad, for the Appellant; V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Anandh K., Hemant Bajaj and Ambaris

Final Decision : Allowed

Judgement

1. The Respondent herein is engaged in manufacturing of Ayurvedic PP Medicines, falling under sub heading No. 3003.9 of Central Excise Tariff Act, 1985. The Respondent had also cleared the goods in different packing in guise of Animal Feeds Supplements under sub heading No. 2302.00 leviable to nil duty.

2. The Department classified the products under sub heading No. 3003.39 and issued four show cause notices demanding Rs. 84,44,355/- Under Section 11A of Central Excise Act for the period March 94 to November 1998.

3. The Commissioner vide order in original dated 2.3.2003 confirmed the duty of Rs. 69,64,566/- in respect of Caldhan suspension, Livfit Vet and Ayucal premix. However the Commissioner did not confirm the demand of duty of Rs. 8,44,791/- involved in Ayucal-D Dimbpro Premix and Toxiroak. The Commissioner also imposed a penalty of Rs. 6 lakhs Under Rules 9(2), 173Q and 226 and Rs. 21,78,696 under 11A of Central Excise Act.

4. Aggrieved the Respondent approached CESTAT. The CESTAT vide order dated

14.2.2005 has allowed the appeal by relying upon the facts that the packing materials bears the words "not for medicinal use".

5. The Revenue is in appeal challenging the judgment of the Tribunal. We may mention at the outset that the products which are involved are livfit premix, Ayucal Premix and Caldhan suspension. They are meant for animals. As per the Assessee these are animal feed supplements and therefore fall under Chapter Heading 23.02.00. On the other hand the Department maintain that these products are "veterinary medicament" and therefore should fall under Heading 30.03. These two entries read as under:

2302: Preparations of a kind used in animal feeding, including dog and cat food;

30.03: Medicaments (including veterinary medicaments).

6. There are several reasons given by the Tribunal in classifying these products as animal feed supplements. One important reason in support which is noted by the Tribunal is that the Department''s own laboratory, namely, CRCL has opined that livfit Vet is not described in authoritative books for Ayurvedic medicines and it can be considered animal feed supplement. Insofar as Ayucal premix is concerned, here again, CRCL has opined that it should be animal feed supplement. Thus, insofar as these two products are concerned, Government''s own laboratory has classified them as animal feed supplement and not veterinary medicament. Insofar as Caldhan suspension is concerned, the CRCL could not give any opinion either way. Because of this reason the Tribunal went into the certificates which were produced by the Assessee from other experts. These certificates demonstrate that none of these products are medicament. No doubt, Indian Veterinary Research Institute (IVRI) has opined otherwise. However, as against that there is an opinion of Dr. Mahesh Kumar, Associate Professor of G.B. Pant University of Agriculture and Technology, stating that Caldhan can be recognized as a tonic or food supplement only which provides low levels of calcium or phosphate to the animals and thereby helps in maintaining tenacity of muscles. It is also stated by him that Caldhan cannot be used for therapy of milk fever as it provides not only 325 mg calcium per 20 ml whereas for the therapeutic management of milk fever, a minimum of 100-150 g calcium should be given intravenously as 20-30% solution. Pertinently even on the printed labels for this product, it mentioned "not for medicinal use". Otherwise also we find that insofar as this product, namely, Caldhan suspension is concerned, the Revenue effect is only Rs. 16,000/- for the period in question and statement was made at the Bar by Mr. Lakshmikumar, Advocate, that the Assessee has stopped the production of this product.

7. We, thus, see no reason to interfere with the judgment of the Tribunal. The appeal is, accordingly, dismissed.

