

(2003) 08 SC CK 0110
In the Supreme Court Of India
Case No : Civil Appeal No. 351 Of 2001

Dabur India Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37B

Citation : (2003) ECR 129 : (2003) 157 ELT 129 : (2004) 13 SCC 107

Hon'ble Judges : S. B. Sinha, J;Ruma Pal, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. The appellant manufactures medicinal products out of herbal extracts. The questions which have arisen in this appeal, inter alia, are whether the extracts were goods for the purpose of the Central Excise Act and if so, whether they were classifiable under Chapter 13 or 30 of the Act.

2. The appellant carries on its business both in West Bengal as well as in Uttar Pradesh. Demands were raised in respect of the period 1-8-1990 to 28-2-1994 by Revenue Authorities in both the States on the basis that the herbal extracts were leviable to excise duty under Chapter 13. As far as West Bengal was concerned the relevant entries were construed by the Commissioner and it was held that the goods were properly classifiable under Chapter 30 under Tariff Item 30.03. The rate of duty at that point of time was nil. He accordingly dropped the proceedings.

3. As far as Uttar Pradesh was concerned however, the Commissioner decided the proceedings against the appellant holding that the extracts were properly classifiable under Chapter 13. The appellant's further appeal to the Tribunal from this decision was rejected and that is the order impugned before us.

4. The relevant entries in Chapter 13 are reproduced below :

"CHAPTER 13 LAC, GUMS, RESINS AND OTHER VEGETABLE SAPS AND EXTRACTS

Heading No. Sub-Heading No. Description of Goods Rate of Duty

(1) (2) (3) (4)

13.01 --

1301.10 1301.90 Lac, gums, Resins and other vegetable saps and extracts Lac
Other

Nil 15%"

5. The Revenue s contention that the extracts in question were properly classifiable under 1301.90 and duty was leviable on the applicant under the Act in respect of the extracts at 15%.

6. As far as Chapter 30 is concerned it deals with pharmaceutical products. The Entry on which reliance has been placed by the appellant is 3003.30. It reads :

"PHARMACEUTICAL PRODUCTS

Heading No. Sub-Heading No. Description of Goods Rate of Duty

(1) (2) (3) (4)

30.03 --

3003.30 Medicaments (including veterinary Medicaments)

Medicaments, including those used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems.

15% "

7. Extracts of the Chapter note in connection with the relevant entry which have been relied upon by the appellant assessee are quoted verbatim :

"2. For the purpose of Heading No. 30.03 :

(i) 'Medicaments' means goods (other than foods or beverages such as dietetic, diabetic or fortified foods, tonic beverages) not falling within Heading No. 30.02 or 30.04 which are either :-

(a) products comprising two or more constituents which have been mixed or compounded together for therapeutic or prophylactic uses; or

(b) unmixed products suitable for such uses put up in measured doses or in packings for retail sale or for use in hospitals.

5. In relation to products of Heading No. 30.03, conversion of powder into tablets or capsules, labelling or re labeling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to

'manufacture'."

8. The appellants raised several contentions including that of limitation. But, the mainstay of the appellants argument is a circular which has been issued by the Central Board of Excise and Customs (CBEC) u/s 37B of the Act by which the Board has issued a clarification in respect of liquid vegetable extracts obtained in the manufacture of Ayurvedic medicines. The Circular clarified :

"That liquid vegetable extracts unless subjected to fermentation or other preservative processes are not liable to be considered as "goods" attracting the scope of excise levy. Mixed or compounded vegetable extracts which have therapeutic or prophylactic value are appropriately classifiable under Heading 30.03 of the Central Excise Tarrif."

9. It appears from the record that the extracts in question were liquid. Both the Commissioner and the Tribunal have held that the extracts had "medicinal value". However, on the ground that the extracts themselves could not be used as medicaments, it was held that they were properly classifiable under Chapter 13 and not in Chapter 30.

10. The Commissioner's interpretation of the tariff item was made without reference to the CBEC circular. His conclusion that only products which are capable of being put to therapeutic was prophylactic used as such i.e. without further processing etc. would qualify for classification as medicaments under Chapter 30 is not in keeping with the interpretation given by the Board nor indeed the interpretation given by the Commissioner of Central Excise, Calcutta. The Circular makes it quite clear that if the compound vegetable extracts had any therapeutic or prophylactic value they were properly classifiable under Heading Chapter 30.03. There is no requirement that the extract should be used for therapeutic or prophylactic purposes "as such".

11. The Tribunal which referred to the circular misinterpreted it when it said :

"The ingredients - vegetables extracts could not be confused with the final medicaments prepared from such extracts along with other ingredients. Merely because the herbs had medicinal properties, it could not be said that the extracts were medicaments as per the definition in the tariff and as commonly understood,"

12. The Tribunal's reasoning appears to be contrary to the CBEC circular and in any event wholly contradictory. According to the Tribunal the Circular in effect meant that:

"The mixed or compounded vegetable extracts which had no therapeutic or prophylactic value were not 'goods' but if they had therapeutic or prophylactic value, they were 'goods'.

13. In the course of its judgment the Tribunal noticed that the vegetable extracts in question did not have "due character of Medicaments" and that they were not

usable for therapeutic or prophylactic purposes."

14. If that be so, then according to the Tribunal's own reading of the CBEC circular they were not goods at all and could not be subject to excise duty.

15. Whichever way we look at it the reasoning of the Tribunal cannot be sustained. That the circular is binding on the Revenue Authorities cannot be disputed in view of the well established law summarised in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, . Since the concurrent finding of fact is that the liquid extracts used by the appellant in the manufacture of the medicines had therapeutic value, then they can, according to the CBEC circular be classifiable only under Tariff Entry 30.30 and not 13.03.

16. The appeal is accordingly allowed. The decisions of the Tribunal and Commissioner are set aside and the impugned demands quashed. There will be no order as to costs.