
(1999) 03 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 242 of 1993

DCI Pharmaceuticals Pvt. Ltd.	Vs	APPELLANT
The Superintendent of Central Excise (DIV) and others		RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 5

Citation : (1999) 3 BomCR 681 : (2000) 69 ECC 619 : (2000) 89 ECR 466 : (2000) 115 ELT 45

Hon'ble Judges : R.K. Batta, J; N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant; S.R. Rivonkar, A.C.G. S.C., for the Respondent

Judgement

N.P. Chapalgaonkar, J.—Petitioners, M/s. D.C.I. Pharmaceuticals Pvt. Ltd., are manufacturers of pharmaceutical products. They claim to be a Small Scale Industry. One of their products has a brand name "Betnor". It is combination of Betamethasone and Neomycin. It is used as eye/ear drops. Petitioners claim that they are entitled to the benefit of a Notification No. 175/186-C.E. dated 1st March, 1986, as amended, for exemption for the first clearance of specified goods up to the value of Rs. 15,00,000/- and concessional duty on subsequent clearance in the case of clearance not exceeding rupees 2 crores in the preceding years. Rule 8 of the Central Excise Rules, 1944, had given powers to the Central Government to grant exemption from duty in certain cases. Section 5A was inserted in the Central Excises and Salt Act, 1944, with effect from 1st July, 1988 and section 5A has now provided for the power to exempt and reference to Rule 8 now will not be necessary since it stood abrogated.

2. It is contended by the petitioners that they are entitled for other benefit of the aforesaid Exemption Notification, but by an Order dated 6th May, 1991, the Assistant Collector of Central Excise, Panaji, Goa, denied the benefit of the said Notification to other petitioners' clearance and the said Order was confirmed in

appeal by the Collector of Central Excise (Appeals), Bombay on 26th November, 1992, The writ petition challenges both these Orders.

3. The carton containing 5 ml. packing of "Betnor", specified goods in question, is produced on record. On two sides of the carton the logo of D.C.I. Pharmaceuticals Pvt. Ltd. is printed. It is also mentioned on both the sides that the said specified goods are manufactured in India by D.C.I. Pharmaceuticals Pvt. Ltd., Vidyanagar, Margao, Goa, 403601. Out of the four sides of the carton, on one side there is a logo "Indoco" and it is mentioned that these goods are marketed by Indoco Remedies Ltd., 18-A, Mahal Estate, Andheri (E), Bombay 400 093. The Assistant Collector of Central Excise, Panaji, recorded an admission by the petitioner that the product is marketed by Indoco Remedies Ltd. and it bears its logo. The fact that Indoco Remedies Ltd. are not eligible for exemption of duty under Notification No. 175/186-C.E. as amended is not in dispute. Petitioners' contention that the logo has been used only for the purpose of indicating from whom the goods would be available is also recorded. The Assistant Collector of Central Excise, Panaji, was of the opinion that in terms of para 7 with Explanation VIII of Notification No. 175/186-C.E., as amended, the product will not be eligible for exemption of duty under the above Notification. The Collector of Central Excise (Appeals), Bombay, who dismissed the Appeal observed;

".....the appellants have admitted that the trade mark "Indoco" of M/s. Indoco Remedies is used for the reason that the latter is a distributor and promoter. So it is not that the said trade mark is mentioned for any purpose other than the trade. The trade mark of Indoco Remedies helps them in promoting their sales for their product. If this is not the purpose, there should not have any need to show the trade mark of M/s. Indoco Remedies so prominently to attract the immediate attention of the customer."

For this reason he confirmed the Order passed by the Assistant Collector of Central Excise, Panaji and dismissed the Appeal. Para 7 of the Exemption Notification, which according to the Revenue, disentitles the petitioner from the exemption, so far as is relevant for the purpose of this writ petition, reads as under:-

"7. The exemption contained in this notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification."

Explanation VIII to the said para 7 defines "brand name" or "trade name" as under :-

"Explanation VIII - "Brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate

a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person."

4. While upholding the constitutional validity of para 7 of Notification No. 175/186-C.E., the Supreme Court in the case of Union of India v. Paliwal Electricals (P) Ltd. 1996(3) E.L.T. 241 (S.C.) underlining the object of para 7, held:-

"If a small manufacturer who affixes the brand-name or trade name of an ineligible manufacturer (a convenient expression to denote a manufacturer outside the purview of Notification No. 175 of 1986 and who owns or entitled to use a brand-name or trade-name), the very "reason sic raison d'etre" for granting the exemption disappears. The exemption is designed to enable the small manufacturer to survive in the market in competition with the ineligible manufacturer but if he joins, or identifies himself with the ineligible manufacturer, his goods become one with the goods of such ineligible manufacturer. They become indistinguishable. In the market, they will all be understood as one and the same goods. They no longer need the benefit under the Notification."

Therefore, if the same brand-name, or trade-name is also used by a manufacturer who is not eligible for the exemption then this would be a mis-use. The object of para 7 is to prevent this. It prevents both loss to the Revenue and illegal advantage to an ineligible competitor. It is not the case of the respondents that trade-name "Betnor" is also used by Indoco Remedies Ltd. Had it been that case then this would have certainly come under para 7. Merely because the goods are distributed by some other Company/Agency and their name and logo are printed on the cartons of specified goods, it cannot be said that they are identified with the user of the brand-name in question. In the absence of any material that M/s. Indoco Remedies Ltd. are also producing a combination of Betamethasone and Neomycin under the brand-name "Betnor", or using the brand-name/trade-name "Betnor", for any of their produces, petitioners cannot be denied the benefit of the Exemption Notification No. 175/186-C.E.

5. We, therefore, allow the writ petition, quash and set aside the orders passed by the Assistant Collector of Central Excise, Panaji on 6th May, 1991 and by the Collector of Central Excise (Appeals) Bombay, on 26th November, 1992 and declare that the petitioners were entitled for the benefit of the Exemption Notification No. 175/186-C.E. for the goods cleared. Rules made absolute with no order as to costs.

6. Petition allowed.