(1988) 04 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 765 of 1981

Glindia Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Citation : (1989) 22 ECC 311 : (1988) 18 ECR 181

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

1. The first petitioners company manufacture a diverse range of preparations including drugs and medical preparations, laboratory chemicals and nutritional food products for animals. Petitioners have their factory at Worli in Greater Bombay and at Thane. The petitioners manufacture inter alia products which are known by trade names Vitablend. WM Forte and Vimeral. These preparations contains Vitamins A, B & D and are intended to be used as supplements to either liquid or solid animal feeds. They are known in the trade as animal feed supplements. The petitioners have relied upon a certificate dated 25th February, 1974 from the Commissioner Food and Drug Administration to the effect that General Liquid Food Supplement is an animal feed supplement and is not a drug within the meaning of Drugs and Cosmetics Act, 1940. They have also annexed affidavits of stockists of animal food saying that these products are purchased for the purpose of supplementing animal and poultry feed. They are not sold as medicines.

2. The Petitioners started manufacturing these two products in the year 1966 in their factory at Thane. In November 1971, the Assistant Collector passed an order stating that these products were animal feed and did not fall under Tariff Item 14E for the purpose of excise duty.

3. As from 1st March 1975, Tariff Item 68 was introduced in the Central Excise Tariff which is a residuary item. Under an exemption notification of the same date bearing No. 55/75, certain goods failing under Tariff Item 68 were exempted

from payment of excise duty. One of the items so exempted was "animal feed including compound livestock feed". The Petitioners were given the benefit of this exemption notification and no excise duty was charged on these two products. In 1978 however, the petitioners shifted their factory to Worli. Thereupon, a fresh classification list was filed in respect of these two products. The respondents thereupon claimed that these two products fell under Tariff Item 14(E). The petitioner filed a petition being Writ Petition No. 1426 of 1986 challenging this classification. Thereafter, it was agreed between the parties that the petitioners would be given a hearing before orders are passed and the petitioners paid excise duty on these two products under protest under Tariff item 68 on clearances made after 1978.

4. Thereafter, the Assistant Collector by his order dated 22nd May, 1979 held that the goods did not fall under Tariff Item 14(E) but fell under Tariff item 68 and qualified for exemption under Exemption Notification 55 of 1975. This order, however, was revised by the Collector who, by his order dated 19th January 1981, classified the goods under Tariff Items 14(E). This petition challenges the order of the Collector.

5. Tariff item 14(E) is as follows :

Patent or proprietary medicines not containing alcohol, opium, Indian hemp or other narcotic drugs or other narcotics other than those medicines which are exclusively Ayurvedic, Unani, Sidha or Homeopathic.

Explanation I : Patent or Proprietary Medicines means any drug or medicinal preparation, whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals".

Mr. Lokur, the learned Counsel for the respondents contends that these two products in question must be considered as medicines because by feeding vitamins animal ailments are prevented. Hence, the products would fall under Entry 14E. This contention cannot be accepted. The preparations in question are used to supplement animal feed. Sometimes, animal feed or poultry feed is already fortified with these vitamins when sold. Sometimes, however, farmers prefer to add the vitamins either to animal feed or to poultry feed separately. These products strengthen the nutritional quality of animal feeds. Thus, for example, items the Bournvita or Complan also add nutrients to milk. But they are not for that reason, medicines. In a general sense every kind of nourishment strengthens the body against ailment. But such nourishment cannot be considered as a medicine or a drug. The two products are also known in the trade as animal feed supplements and they are sold by the suppliers of animal feed. The petitioners have also annexed at Ex. ''V'' a list of other similar products of other manufacturers which have been classified by the respondents under Tariff item 68 and given the benefit of the exemption notification. The two preparations therefore cannot be classified under Tariff item 14(E). They would, therefore, fall under the residuary item 68.

6. It is next contended by the respondent that even if the two products fall under Tariff item 68 the benefit of the exemption notification No. 55 of 1975 cannot be given to these products because these products are not animal feeds. They are merely animal feed supplements. This exemption notification has been amended by another notification No. 6 of 1984 dated 15th February 1984 as a result of which the item "animal feed including compound live stock feed" is now substituted by "animal feed including compound live stock feed, animal feed supplements and animal feed concentrates". After the coming into force of this notification the petitioners have been given the benefit of full exemption. The only question is whether prior to this notification, the petitioners are entitled to exemption under the original notification No. 55 of 1975.

7. In the case of the petitioners themselves namely Glaxo Laboratories India Limited v. The State of Gujarat reported in 1979 43 Sales Tax Cases, page 386, the Gujarat High Court was required to consider whether certain vitamin products including Vitablend WM Forte which were used for supplementing cattle and poultry feed should be classified as "cattle feed" within the meaning of Entry 21 of Schedule I of the Gujarat Sales Tax Act, 1969 or "poultry feed" within the meaning of Entry 22 of Schedule I of that Act. The Gujarat High Court has held that the terms "cattle feed" and "poultry feed" must include not only that food which is supplied to domestic animals or birds as an essential ration for the maintenance of life but also that feed which is supplied over and above the maintenance requirements for growth or fattening and for production purposes such as for reproduction, for production of milk, eggs, meat, etc. or for efficient output of work. The same reasoning would apply to the present case also. These products are also fed to animals or poultry to give them better nourishment. They would, therefore, qualify as "animal feeds".

8. It was submitted by the respondents that the subsequent amendment expressly refers to "animal feed supplements". This suggests that animal feed supplements were not previously included in the exemption notification. This reasoning must be rejected. The amendment appears to be clarificatory in nature. For example, the amendment now expressly refers also to animal feed concentrates which were not expressly referred to earlier. It cannot be said that animal feed concentrates are not animal feed. In the same manner products which supplement animal feed and are generally added to animal feed are also covered by the generic term "animal feed".

9. For the period 15/11/1978 to 4/6/1979, the petitioners have paid excess duty on these two products under Tariff item 68 without getting the benefit of the Exemption Notification. The Petitioners are entitled to a refund of the excise duty so paid.

10. As from 21/5/1981 to 15/2/1984 the petitioners have paid excise duty pursuant to the interim order passed in this petition under Tariff item 68 without the benefit of the exemption notification and have also furnished bank guarantees for the difference in duty chargeable under Tariff items 14E and 68.

These bank guarantees now stand discharged, and the respondents are directed to refund to the petitioners excise duty paid under Tariff item 68 for this period.

11. The petitioners to furnish particulars of the refunds to which they are entitled as above within a period of eight weeks from today. The respondents to refund the amount so ascertained within a period of twelve weeks thereafter.

12. Rule is made absolute accordingly. The respondents to pay to the petitioners costs of the petition.

