
(1999) 08 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 7766 of 1995

Hamdard (Wakf) Laboratories

APPELLANT

Vs

Collector of Central Excise, Meerut

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Citation : (1999) 66 ECC 14 : (1999) 113 ELT 20 : (2000) 10 JT 527 : (1999) 6 SCC 617

Hon'ble Judges : S. P. Bharucha, J;N. Santosh Hedge, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. Bharucha and N. Santosh Hegde, JJ.—The appeal is concerned with the classification of a product made by the appellant called "Sharbat Rooh Afza". It consists in the main of an invert sugar base, pineapple juice and distilled extracts of the following :

Daucus carrots (Gajar)

Portulaca oleaceae (Khurfa)

Citrullus vulgaris (Tarbooz)

Spinacia oleracea (Palak)

Mentha arvensis (Pudina)

Luffa cylindrica (Hara Ghia)

Cichorium intybus (Kasni)

Vitis vinifera (Munaga)

Santalum album (Santal Sufed)

Vetiveria zizanioides (Khas Hindi)

Parnelia perlate (Chharrhila)

Nymphaea alba (Gul Nilofar)

Onosma bracteatum (Barge gaozabani)

Keora

It also contains some orange juice and distillates of Citrus medica, Rose damascene and permissible food colours. It is said to be a summer drink and useful also in treating disorders associated with heat. It can be used in ice creams, puddings and the like but its main use is as a table drink for which purpose three table spoonfuls are to be mixed in a glass of cold water.

2. The question is whether the said sharbat falls within Tariff Heading 2202.90, as the appellant contends, or under Heading 21.07 as the excise authorities maintain. Their stand was upheld by the Central Excise and Gold (Control) Appellate Tribunal by the judgment and order under appeal.

3. Chapter 22 of the Tariff deals with beverages, vinegars and spirits but does not cover alcohol liquor for human consumption. Heading 22.02 deals with "natural or artificial mineral waters and aerated waters containing added sugar or other sweetening matter or flavoured; other non-alcoholic beverages, not including fruit or vegetable juices of Heading No. 20.01." (Emphasis supplied). Thereunder are specified rates of excise duty for natural or artificial mineral waters and aerated waters and then there is the sub-heading 'Other', under which, it is submitted on behalf of the appellant would fall the said sharbat.

4. Entry 21.07 falls under Chapter 21, dealing with miscellaneous edible preparations. Entry 21.07 itself deals with "edible preparations not elsewhere specified or included", and the sub-heading under which the said sharbat has been classified says, "Put up in unit containers and ordinarily intended for sale." Reliance is placed on behalf of the excise authorities upon Note 5 of Chapter 21 and Clause (j) thereof. It says, "Heading No. 21.07, inter alia, includes preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients."

(Emphasis supplied).

5. Beverages, broadly speaking are liquids for drinking, other than water, which may be consumed neat or after dilution.

6. The Tribunal would appear to have gone wrong in concluding that the said sharbat did not fall under Entry 2202.90 because it reads "not including fruit or vegetable juices of Heading 20.01", as meaning beverages which do not contain fruit or vegetable juices. This is patently erroneous. Where the Tariff wanted to convey this intention it used the words "not containing", as in Heading 22.01, and where it intended to convey that an article should contain something it used

the word "contained", as in Entry 22.02 itself. The fact that a beverage includes fruit or vegetable juice does not ipso facto exclude it from Heading 22.02. Only beverages that contain fruit or vegetable juices that fall under Heading 20.01 are excluded from Heading 22.02.

7. The Tribunal would also appear to have concluded that the said sharbat was not a beverage but a preparation for the same. The fact that three table spoonfuls of the said sharbat have to be added to a glass of water to make it drinkable does not, in our view, make the said sharbat not a beverage but a preparation for a beverage. Were that so, many beverages which are classified as such, as for example, tea, coffee, orange squash and lemon squash would not be beverages. (See, for example, paragraph 5 of this Court's judgment in the case of Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., et seq of the Tribunal's judgment in the case of 1988 (18) ECR 1 30 . It seems to us that the phrase 'preparations for lemonades or other beverages' in Clause (j) of Note 5 of Chapter 21 was intended to refer to the industrial concentrates from which aerated waters and similar drinks are mass produced and not to preparations for domestic use like the said sharbat.

8. It was necessary for the respondents to have shown, having regard to the terminology of Heading 21.07, that the said sharbat was "not elsewhere specified or intended". That, in our view, was not done. In fact as we see it, it falls within the terms of Heading 2201.90.

9. In the result, the appeal is allowed. The order of the Tribunal under appeal is set aside. All consequential relief must follow. No order as to costs.