
(1993) 01 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 794 of 1983

Rallis India Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Constitution of India, 1950 — Article 226

Citation : (1993) ECR 570 : (2005) 182 ELT 154

Hon'ble Judges : V.A. Mohta, J;S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : S.N. Parikh and Shabnam Patne, instructed by Eastley Lam and Co, for the Appellant; R.V. Desai, for the Respondent

Final Decision : Allowed

Judgement

V.A. Mohta, J.—By this petition, the Petitioners, Rallis India Limited and another, challenge the orders passed by the Assistant Collector of Central Excise, DN. K-II, Bombay-I dated 10th September, 1982 and by the Collector of Central Excise (Appeals) Bombay, dated 26th February, 1983, being Exhibits "O" and "T" respectively to the petition by which it has been held that "Amezole Tablet" manufactured and patented by the Petitioners, is not eligible for concessional rate of duty Under Notification No. 116/69 dated 3rd May, 1969.

2. By the said Notification No. 116/69 issued in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government exempted patent or proprietary medicines falling under Item No. 14E of the First Schedule to the Central Excise and Salt Act, 1944, and containing one or more of the ingredients specified in the Schedule thereto annexed, from the whole of the duty of excise leviable thereon. The material part of the said Notification which falls for consideration, reads thus :-

"Nothing contained in paragraph 1 shall apply to any medicine which contains any ingredient not specified in the said Schedule unless the ingredients in the

medicine are pharmaceutical necessities such as diluents, disintegrating agents moistening agents, lubricants, buffering agents, stabilisers and presser-vatives;

Provided that such pharmaceutical necessities are therapeutically inert and do not interfere with the therapeutic or prophylactic activity of the ingredient or ingredients specified in the Schedule."

The composition of Amezole tablets is as under :-

(1) Metronidazole I. P. .. 400 mg. (2) Calcium Carbonate I. P. .. 50 mg. (3) Magnesium Carbonate .. 100 mg. (4) Other ingredients .. 120 mg.

That Metronidazole is one of the ingredients specified in the Schedule is undisputed. Equally undisputed position is that the ingredients Calcium Carbonate I. P. and Magnesium Carbonate have the potentiality of having antacid effect if dose is taken respectively in the measure of 1 to 4 grammes and 0.3 to 0.6 grammes.

3. The Petitioners contend that Metronidazole I. P. is the only active ingredient in the "Amezole Tablets" which has the therapeutic effect. Calcium Carbonate I. P. Magnesium Carbonate in the said tablet did not, in any way, affect the strength and the effect of Metronidazole I. P. Calcium Carbonate and Magnesium Carbonate were merely a pharmaceutical necessity for acting as diluents. They were therapeutically inert. The Petitioners, therefore, contend that "Amezole Tablet" is eligible for concessional rate of duty under Notification No. 116/69. The Respondents contend that mere presence of Calcium Carbonate and Magnesium Carbonate in the composition irrespective of the quantity and regardless of whether it was active as an antacid or not, takes the tablet outside the scope of the said Notification.

4. The point involved does not seem to be any more res-integrata. In the case of May and Baker (India) Limited Vs. Union of India, (Writ Petition No. 2667 of 1982 decided on 21st June, 1989 by the learned Single Judge of this Court), a similar contention of the Respondents in the matter of Flagyl tablets, has been rejected and the said Judgment has been confirmed by the Division Bench of this Court in Appeal No. 1149 of 1989 decided on 22nd October, 1990 to which one of us (Jhunjhunwala, J.) was a party.

Flagyl tablet contains Metronidazole I. P. 400 mg and Calcium Carbonate I. P. 21 mg, along with other excipients. The ratio of the above decision is that the requirement in the proviso must be read as a whole. The pharmaceutical necessity must, having regard to the formulation of the medicine, be therapeutically inert and not interfere with the therapeutic or prophylactic activity of the ingredient or ingredients specified in the Schedule.

5. There is no material to show that the Calcium Carbonate or Magnesium Carbonate in the formulation of "Amezole tablet" can have antacid effect. On the contrary, the Petitioners have relied upon the certificate issued by Joint Commissioner (H.Q.), Food and Drug Administration which states that "Amezole

Tablet" manufactured by the Petitioners is intended and approved for treatment of Amoebas and Magnesium Carbonate I. P. and Calcium Carbonate I. P. shown in batch cards are used as excipients which are required in making of a tablet and that their user in such quantity is ineffective as antacids.

6. It is contended on behalf of the Respondents that having regard to the variation in the formulation of the two tablets "Flagyl" and "Areole," the ratio of the aforesaid decision will not apply to the instant matter. The submission cannot be accepted. The ratio will apply unless the difference in the dose exceeds the quantity which makes them effective as antacids in the formulation.

7. The learned Counsel for the Respondents submitted that where the statute itself provides the Petitioners with an efficacious alternate remedy, it is not for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. We, however, cannot over-look the fact that this petition filed in 1983 has been entertained by this Court and given a hearing on merit on its entirety to the parties. In the facts of the case, it would now be too late in the day to ask the Petitioners to avail of the alternate statutory remedy after lapse of about ten years.

8. In the circumstances, we hold that "Amezole Tablets" were exempted under the said Notification. The Petition is allowed and the Rule is made absolute. The bank guarantee and for bond furnished in pursuance of interim order passed on 28th March, 1983, to stand cancelled after a period of ten weeks from today. There shall be no order as to costs.

9. Issuance of certified copy on application is expedited.