

(1989) 09 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 2260 of 1989

Sarabhai M. Chemicals

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-09-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37B

Citation : (1990) 29 ECC 228 : (1991) ECR 794 : (1995) 76 ELT 34

Hon'ble Judges : J.U. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : K.S. Nanavati, for the Appellant; J.D. Ajmera, for the Respondent

Judgement

A.P. Ravani, J.—The petitioner company is manufacturing "sorbitol" which is liable to excise duty. The contention of the Excise Department is that it is covered by the Schedule wherein the goods liable to excise duty are mentioned. The contention of the petitioner company is that it is entitled to exemption of excise duty as per Notification No. 234/82, dated November 1, 1982 and Notification No. 234/86, dated April 3, 1986. The contention of the petitioner company is based on the ground that the aforesaid commodity is "bulk drug" and irrespective of end-use of the same, it is entitled to exemption from payment of excise duty. As against this, it appears that the stand of the department is that unless the product is used for a particular purpose, i.e. for medicinal use, the manufacturer cannot claim exemption.

2. The Assistant Collector of Central Excise, Vadodara and the Additional Collector of Central Excise have issued different show cause notices calling upon the petitioner company to show cause as to why the company should not be directed to pay excise duty on the basis that it was not entitled to exemption as claimed for. In response to some of the show cause notices, the petitioner company has filed reply while in response to some of the notices reply is not filed. Pending the proceedings before the Assistant Collector and the Additional Collector, Central Excise and Customs, Vadodara, this petition is filed inter alia

praying that Trade Notice No. 120/20/83, dated 2-12-1988 and Trade Notice No. 264/88, dated 28-12-1988 be quashed and set aside. The petitioner company apprehends that in view of the trade notices issued by the Central Board of Excise and Customs, the officers before whom the proceedings are pending would not decide the matter judiciously and that the remedy before the department has become illusory.

3. The Central Board of Excise and Customs issued Trade Notice No. 120/20/83/CX, dated December 2, 1988. Therein reference is made to notification No. 234/82 and Notification No. 234/86. The expression "bulk drugs" falling under erstwhile Tariff Item No. 68 has been considered and certain clarifications have been made in this behalf. In paras 4 and 5 of the Trade Notice it is stated as follows :

"4. In the present case, a portion of caffeine was supplied to the manufacturers of beverages and soft drinks. Evidently, in such a situation these goods cannot be deemed to have been used for the purpose of diagnosis, treatment, mitigation or prevention of diseases in human beings or animals and used as such or as an ingredient in any formulation. The exemption for these goods as "Bulk Drugs" under the above notifications cannot be allowed as they have not been used as "Bulk Drugs" for the purposes specified in these two notifications. Therefore, it is clarified that, in terms of the above notifications, the exemptions to "Bulk Drugs" can be extended only when these "Bulk Drugs" are used as "Bulk Drugs" for the purposes specified therein.

5. All pending assessments may please be finalised on the above basis"

Similar trade notice was issued by the Collector, Vadodara on December 28, 1988. The trade notice issued by the Collector reiterates what has been stated in the trade notice issued by the Board.

4. The learned counsel for the petitioner submits that in view of the aforesaid directions and particularly in view of the contents of paras 4 and 5 of the trade notice issued by the Board, which is reproduced hereinabove, the officers would be bound by the clarifications/ instructions issued by the Board and therefore it would be futile to proceed further with the proceedings pending before the Assistant Collector and the Additional Collector. In support of this contention, reliance is placed by the learned counsel for the petitioners on the provisions of Section 37B of the Central Excises and Salt Act, 1944. This section empowers the Central Board of Excise and Customs to issue such orders, instructions and directions to the Central Excise Officers as it may deem fit. Such orders, instructions and directions issued by the Board are binding upon all the persons employed in the execution of the Act and they are bound to follow these orders, instructions and directions. Therefore, it is submitted that the officers are duty bound, as per the statute, to follow the instructions issued by the Board.

5. The aforesaid submission cannot be accepted for the simple reason that the submission is based on incomplete reading of Section 37B. Proviso to Section

37B of the Act reads as follows :

"Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions."

The aforesaid provisions contained in proviso make it abundantly clear that orders, instructions and directions issued by the Board shall not require any Central Excise Officer to make a particular Assessment or to dispose of a particular case in a particular manner. It further clarifies that such order, instruction or directions shall not be issued so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions.

6. Over and above the aforesaid statutory provisions, on principle also, the aforesaid contention cannot be accepted. Whenever any authority is conferred with power to determine certain questions in judicial and/or quasi-judicial manner, the authority is required to exercise the power conferred upon him as per his own discretion. That is the essence of judicial and/or quasi-judicial function. The authority exercising judicial and/or quasi-judicial functions is not to be influenced by any directions, instructions, or orders that may be issued by any outside agency. If such authority is to exercise judicial/quasi-judicial powers as per the dictates of any other outside agency, the exercise of power would cease to be judicial/quasi-judicial functions.

7. In the case of Aluminium Corporation of India Ltd. v. Union of India decided by the Supreme Court on September 22, 1965 (Civil Appeal No. 635 of 1964) the Supreme Court held that the appellate power exercised by the Collector, Central Excise, u/s 35 of the Act is a quasi-judicial power. The Collector is designated as an appellate authority. Before him there is a lis between the parties and his order is subject to revision by the Central Government. In this view of the matter, the Supreme Court held that the power exercised by the Collector (Appeals) is quasi-judicial power. The aforesaid observations have been reiterated by the Supreme Court in the case of Orient Paper Mills Ltd. Vs. Union of India (UOI), . Therein the Supreme Court in terms held that the administrative directions issued by the Board would not be binding on the Collector when the Collector discharges his quasi-judicial functions. Similar view is taken by this Court in the case of Genest Engineers Pvt. Limited Vs. Union of India, .

8. In above view of the matter, the apprehension harboured by the learned Counsel for the petitioners that the trade notices will influence the ultimate decision that may be taken by the Assistant Collector and the Additional Collector of Central Excise, before whom the proceedings of different show cause notices are pending has no basis and the same is required to be rejected. No other

contention is raised.

9. In above view of the matter, the petition is required to be rejected. The learned Counsel for the petitioners requests that the petitioners be granted an opportunity to file reply/further reply to the show cause notices before the authority concerned. In the facts of the case, it is directed that if the petitioners have not replied to show cause notices, the petitioners shall file their reply latest before October 19, 1989. In cases where the petitioners have already filed their reply, the petitioners will be at liberty to file further reply on or before October 19, 1989. Thereafter the authorities shall proceed further with the show cause notices in accordance with law.

10. A needless clarification at the instance of the learned Counsel for the petitioners be made. Petitioners will be at liberty to raise all available contentions of facts and law before the departmental authorities. It will also be open to respondents to contend that no such contention as may be raised by petitioners is available to the petitioners. Subject to the aforesaid observations and directions, petition is rejected. Notice discharged.