(1985) 12 BOM CK 0033

In the Bombay High Court

Case No : Appeal No. 293 of 1980 in Miscellaneous Petition No. 1828 of 1979

Union of India and another APPELLANT

Vs

Ajay Cotton Limited and another RESPONDENT

Date of Decision : 18-12-1985

Acts Referred:

Citation : (1988) 19 ECR 419 : (1986) 26 ELT 549

Hon'ble Judges : M.H. Kania, Acting C.J.;M.L. Pendse, J

Bench : Division Bench

Judgement

Kania, Ag. C.J.

1. This is an appeal by the Union of India and others against a judgment of Shah J. allowing the writ petition filed by respondent No. 1, who was the Petitioner in the Writ Petition being Miscellaneous Petition No. 1828 of 1979, and directing the Union of India to give a certain cash subsidy to respondent No. 1. For the sake of convenience we propose to refer to the parties before us by their original description in the petition. The appellants were respondents 21 to 3 in the Writ Petition and respondent No. 2 was respondent No. 4 in the Writ Petition.

2. The relevant facts necessary for the appreciation of the controversy raised in the appeal are fairly brief. The petitioners are a Public Limited Company manufacturing, inter alia "absorbent cotton wool" which was an export commodity. In or about 1969 the Union of India formulated a Scheme of cash subsidy whereby, inter alia, exporters of absorbent cotton wool were to be granted a cash subsidy by way of cash compensatory support equivalent to 15% of the F.O.B. value. The petitioners manufacture the product which they described as "absorbent cotton wool (uncared)". Prior to the petitioners coming on the scene one Lavino Kapur (Private) Limited manufactured the said product and exported the same. The said Company, Lavino Kapur (Private) Limited, was amalgamated with the petitioner company on April 20, 1976 and since then the petitioners manufacture the said product for export purposes. The entire production of the petitioners was utilised for the purposes of export. In the

relevant invoices the said product has been described by the petitioners as "absorbent cotton wool (uncared)". According to the petitioner "absorbent cotton" is a pharmaceutical product and in the pharmaceutical trade in India as well as in International pharmaceutical trade absorbent cotton can be marked either carded or uncared, which would show that in pharmaceutical trade absorbent cotton, whether carded or uncared, is regarded as a pharmaceutical product. All along from 1968 till about September 1977 the said Lavino Kapur (Private) Limited and, after its amalgamation with the petitioner Company, the petitioner Company applied for payment of cash subsidy on their export of the said product on the basis that they had exported "absorbent cotton (uncared)" of pharmaceutical standard and during this entire period they were granted cash subsidy. Respondents 1 and 2, namely the Chief Controller of Imports and Exports and the Joint Chief Controller of Imports and Exports, along with respondent No. 4, namely, the Basic Chemicals, Pharmaceuticals and Soap export policy. Handbooks of Export Policy were published by the said Export Promotions Council. A perusal of Item No. 88.1 of Annexure II of the said Handbook and the relevant provisions shows that the policy of the Government was to grant cash subsidy against the export of product listed therein and the product listed therein was described as "the absorbent cotton wool". The subsidy granted was to the extent of 15% of the F.O.B. value of the said product. The aforesaid facts appear from the Handbooks published by the said Council for the years 1970, 1973, 1975 and so on. As already observed, the product described in the Handbook, on which cash subsidy of 15% on F.O.B. value was allowed, was described as "absorbent cotton wool". In 1973 a doubt was raised whether the petitioner was entitled to the cash allowance under item No. 88.1 of Annexure II, viz. "absorbent cotton wool" and this doubt was raised on the ground that what the petitioner was exported was "absorbent cotton (uncared)" and not "absorbent cotton wool". It appears that the objection was that it was only the carded variety of absorbent cotton that was covered by the item described in Entry BB. 1. In view of this objection the petitioners'' applications for subsidy on the export of the said product were kept pending and the matter was referred to the Local Classification Committee at Bombay. This Classification Committee included amongst its members the Controller of Imports and Exports, Bombay, Senior Export Promotion Officer, the Regional Officer of the Chemical & Allied Products Export Promotion Council, the Assistant Secretary of the Basic Chemicals, Pharmaceuticals Soap and E.P. Council, and also the Accounts Officer of the office of the Joint Chief Controller of Imports and Exports. The minutes of the meeting of this Committee, which was held on 11th January, 1974 show that the product exported by the Petitioners was described in the invoice dated 4th September, 1973 as "absorbent cotton uncared ''Silver'' type Bleached Cotton made out of 100% Bengal Deshi, with code Number 293-4000". The Committee came to the conclusion that the said product was covered by item BB.1 of the said Annexure II and was entitled to cash allowance on that footing. This decision was confirmed by the Headquarter Classification Committee on 2nd December, 1974. That Committee is working under the Government of India in its Ministry of Commerce and the minutes of the relevant meetings show that the meeting was attended by several Government officials, including the Chief Controller of Imports and Exports and Officers from the Ministry of Finance. This decision of the Classification Committee was accepted by the Government and the petitioners'' applications for cash subsidy which had been kept pending were granted. The petitioners continued to receive the cash subsidy on the export of the aforesaid product till March, 1977 and it was only in September, 1977 that the Controller of Imports and Exports rejected the petitioners'' application for cash subsidy. Thereafter the petitioners made such applications from time to time till June, 1978, but they were also rejected. The First Appeal as well as Second Appeal preferred by the petitioners were also rejected and it was thereafter that the petitioners filed the aforesaid writ petition praying, inter alia, for a writ of mandamus directing the respondents to grant to the petitioners the cash subsidy as claimed by them. The claim of the petitioners in the petition was sought to be challenged on the ground that what the Petitioners had exported was uncared absorbent cotton, and not "absorbent cotton wool" of Pharmacopoeia standard and hence the exports did not quality for cash subsidy. It may be mentioned here that in the petition the petitioners have described the qualities of absorbent cotton uncared of the pharmaceutical standard and averred that these qualities were possessed by the said product exported by them. They have also referred to a certificate dated 11th June, 1973 issued by the Manchester Chamber of Commerce, inter alia certifying that the samples, which were drawn from the goods manufactured by the petitioners, showed that the said goods were liable to be regarded as absorbent cotton wool of Pharmacopoeial standard and not as raw cotton. The aforesaid certificate was referred to and relied upon by the petitioners. From a perusal of the certificate, we find that it contains a detailed description of the product manufactured by the petitioners and states that

"Both samples are also satisfactory in respect of composition, bleaching, resistance to pulling, colouring matter, acidity, alkalinity, surface-active substances, colour of aqueducts extract, free from seas, land, small foreign matter and fluorescence when viewed under ultraviolet radiation....."

and contains an opinion that according to the Manchester Chamber of Commerce, the samples comply in all respects with the requirements of the British Pharmacopoeial Standards Codex No. 1975, which would imply that they were regarded as absorbent cotton of pharmaceutical quality. In the grounds the petitioners have specifically averred that in International pharmaceutical trade, absorbent cotton is a general category, which includes both "absorbent cotton uncared" and "absorbent cotton carded". We may also refer to a letter dated 5th September, 1973 addressed by the Purchase Manager, Smith and Nephew Textiles Limited, Bombay who were the major foreign purchasers of the aforesaid product manufactured and exported by the petitioners. It appears from the said letter that on 21st August, 1973, the petitioners had addressed a letter to the said purchasers presumably asking them for a certificate that the said product manufactured was exported by the petitioners was known in trade as "absorbent cotton wool". The aforesaid letter dated 5th September, 1973 requests the petitioners to let the said purchasers have return samples of "B.P.C. quality absorbent cotton wool, uncared, together with current price and quantities available.....", which would show that even cotton wool which was uncared could be regarded as "absorbent cotton wool". As against this, the respondent has relied upon an affidavit of one B.L. Naik, Deputy Drugs Controller, India, Central Drugs Standard Control Organisations, West Zone, All that the said Naik has said is that absorbent cotton wool is included in the Indian Pharmacopoeics. Its other synonyms are absorbent cotton or surgical cotton. Averments in paragraph 3 of the said affidavit show that, according to the standards laid down in Indian Pharmacopoeics, absorbent cotton wool is described as "Well carded cotton fibres and other microscopic characteristics." It appears that on this basis that the respondents have taken the stand that the petitioners are not entitled to the cash subsidy claimed by the petitioners, as the product manufactured by the petitioners was uncared and not absorbent cotton of the carded variety.

3. Now, it is well settled that in cases like this what is of primary importance is not how a product is described in Pharmacopoeias or in scientific works, but how it is regarded in common parlance pertaining to the relevant trade. In the present case, therefore, what would be material is as to whether this absorbent cotton of the uncared variety manufactured by the petitioners and exported by them is regarded as "absorbent cotton wool" in the trade. In the first place, there is no specific denial of the averments to this effect made in the petition. Apart from this, the certificate given by the Manchester Chamber of Commerce clearly indicates that the said product manufactured by the petitioners was regarded as absorbent cotton work of the Pharmacopoeia Variety complying with the necessary standards. What is most important is that the respondents themselves have granted cash subsidy all along till 1977 on the export of this very item. This may not constitute a promissory estoppel, but it would certainly constitute evidence of the fact that in the pharmaceutical trade the product manufactured by the petitioners was regarded as absorbent cotton wool. The Classification Committee, local as well as at the Headquarters, also came to the same conclusion after considering the relevant material. There is, therefore, enough evidence to show that in the common parlance of the trade, namely the pharmaceutical trade in this case, the said product manufactured and exported by the petitioners was regarded as "absorbent cotton wool". It thus clearly fell within the description of the relevant goods contained in item No. BB 1 of Annexure II and hence was entitled to the cash subsidy. In our view, with respect the learned Judge was right in coming to the conclusion that the petitioners were entitled to the cash subsidy claimed by the petitioners. Although a number of other points appear to have been raised in the petition and in the trial Court, no other point was canvassed before us and, therefore, it is not necessary for us to consider any of those points. In the result the appeal fails and is dismissed with costs.

4. It appears that the petitioners have already received the cash assistance claimed by then and in respect of the same have executed a Bank guarantee in favour of the Prothenotary and Senior Master. In view of our aforesaid decision, the said Bank guarantee must be cancelled and returned to the bank concerned.

