(1996) 04 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 89 of 1981

Union of India (UOI) and Another APPELLANT

Vs

Suhrid Geigy Ltd. RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:
Central Excises and Salt Act, 1944 — Section 5A

Citation : (1999) 107 ELT 579 : (1997) 3 GLR 2487 : (1997) 11 SCC 657

Hon'ble Judges : S. C. Sen, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The dispute in this case is about the interpretation of the Notification issued by the Central Government on April 1, 1977 being G.S.R. 163 (E). In that notification the Government exempted clinical samples cleared by a manufacturer of patent or proprietary medicines falling under Item No. 14E of the First Schedule to the Central Excises and Salt Act, 1944, (1 of 1944) from the whole of the duty excisable thereon. This exemption was subject to following provisions:

(i) such clearances in any month are limited to a quantity not exceeding four per cent by value of the total duty paid clearances during the preceding month of all types of patent or proprietary medicines,

(ii) samples are intended for the free supply to hospitals, nursing homes or medical practitioners, and

(iii) the samples are packed in a form distinctly different from regular trade packing and each smallest packing is clearly and conspicuously marked "Physician''s samples, not to be sold.

Provided further that in respect of a patent or proprietary medicine aforesaid, the exemption under this notification will be available only for a period of three years from the date of first clearance of the said medicine from any factory of a manufacturer.

2. The exemption could be claimed only by the manufacturer. The manufacturer was defined in the explanation to mean :

(a) where it is a company within the meaning of the Companies Act, 1956 (1 of 1956), a company

(i) which does not hold any share in the capital of any foreign company, and

(ii) no part of the capital of which is held by a foreigner or a foreign company,

(b) where it is a

(i) the firm has no interest in any foreign firm, and

(ii) no interest in the firm is held by a foreigner or a foreign company and,

(c) where it is an individual, such individual is not a foreigner.

3. The Central Excise authorities declined to grant benefit of this exemption to the respondent company M/s. Suhrid Geigy Ltd. on the ground that it was not a manufacturer within the meaning of the explanation. There is no dispute that the respondent is a Company within the meaning of the Companies Act, 1956. It has been contended by Mr. H.N. Salve, Counsel on behalf of the respondent Company that the respondent company does not hold any share in the capital of any foreign company but a foreign company holds share in the respondent company. What the explanation requires is the fulfilment of both the conditions. In order to be treated as a manufacturer the respondent must not hold any share in the capital of any foreign company and no part of the capital of the respondent company must be held by a foreigner or a foreign company. If the second condition is not fulfilled the respondent does not cease to be a manufacturer. The High Court has rightly held that the word ''and'' between (i) and (ii) of the explanation must be read as conjunctive and not disjunctive. In that view of the matter the respondent company is entitled to the benefit of the exemption notification.

4. We agree with the view of the High Court on this point. The High Court thereafter decided to strike down certain provisions of the notification as being discriminatory and contrary to the guarantee given in Article 14 of the Constitution. It was entirely unnecessary for the High Court to do so. Suffice it to say that we do not agree with the view of the High Court on this aspect of the matter.

Since on the very first point we uphold the contention of the company, the appeal must be dismissed. There will be no order as to costs.

