(1988) 08 BOM CK 0002

In the Bombay High Court

Case No : Appeal No. 1007 of 1988 in Writ Petition No. 765 of 1981 and Writ Notice of Motion No. of 1988

Union of India (UOI) and Others — APPELLANT

Vs

Glaxo Laboratories (India) Ltd. and Another — RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Citation : (1989) 22 ECR 497

Hon'ble Judges : Sugla, J;S.K. Desai, J

Bench : Division Bench

Judgement

S.K. Desai, J.—After the memorandum of Appeal has been amended as per the Draft handed in, we feel that on the question whether the Vitariiin supplements can be accepted as animal feed and therefore entitled to the benefit of exemption notification, the matter deserves consideration by a Bench. This is despite the decision of the Division Bench of the Gujarat High Court in a Sales Tax matter holding in favour of respondent No. 1 (original petitioner No. 1). Accordingly, Appeal is admitted. Since, however, one adjournment was caused by reason of the defective Memorandum of Appeal, which Memorandum of Appeal was required to be rectified, the appellants will pay to the respondents costs of adjournment fixed at Rs. 100/-. This will be a condition precedent to the continuation of interim relief in the appeal. If costs not paid by 31st October 1988, stay hereinafter granted to stand vacated.

2. Shri Lokur for the appellants tenders Draft Notice of Motion. Leave under Rule 141 of the High Court, Original Side, Rules granted to the appellants to take out a Notice of Motion in terms of Draft Notice of Motion handed in. Shri Vahanvati on behalf of the respondents waives service on the undertaking given by the Central Government Advocate to furnish copy of Motion and affidavit in Support to the respondents'' Advocate. Motion is taken up for hearing forthwith on the footing of denials.

3. We have considered the operative order and certain refunds have been

ordered in paragraphs 9 and 10 which come, broadly speaking, in the amounts of Rs. 3 lakhs and Rs. 35 lakhs respectively. These are refunds of amounts paid on the footing that Petitioner No. 1 were not entitled to the benefit of the exemption notification. Although the Single Judge has found in their favour, we have admitted the appeal principally to consider that part of the decision. If that be so, the application for stay must be sympathetically considered, provided that the appellants must be agreeable to pay interest on the amounts which are covered by the operative orders in paragraphs 9 and 10 from the date on which the amounts would have been refundable to the date on which the amounts are actually paid in case the appellants lose in the appeal under the order of the Single Judge, we find that the payment has to be made on or before 2nd September 1988. Accordingly, Liability to pay interest under our Order will be from 3rd September 1988. Accordingly, on the Motion we pass the following order:-

The order of the Single Judge directed the petitioners to furnish particulars of the amounts required to be refunded within 8 weeks from the date of the order. We are told that this has been done. We grant stay to the appellants regarding making actual refunds on their agreeing or undertaking to the Court that if they lose in the appeal as regards this aspect of the matter and the decision of the Single Judge that the 1st respondents were entitled to the benefit of the exemption notification is upheld, the appellants will pay on the amounts to be refunded under paragraphs 9 and 10 of the operative order interest at the rate of 10 per cent per annum from 3rd September, 1988 till the date of actual refund. Interest to be calculated on a simple footing. This undertaking to be given by the appellants has to be recorded by the Central Government Advocate''s letter to the respondents'' Advocate to be sent on or before 2nd September, 1988. In case such letter is not sent by the said date, stay to stand vacated we from 4th September 1988 and the 1st respondents will be free to pursue their remedy to recover the amount. This will be subject to what is hereinbelow provided.

In case the letter recording the undertaking is not addressed by the specified date and the stay would stand vacated under this order, the appellants are permitted to deposit the amount as per particulars furnished by the 1st respondents in Court on or before 3rd September, 1988. If the amount is deposited, stay to continue until the Appeal is disposed of, provided intimation of making of deposit is given to the 1st respondents'' Advocates simultaneously with the making of the deposit. If the amount is not deposited on the 3rd, stay to stand vacated. If the amount is deposited in this Court in the usual manner by 3rd September 1988, liberty to the 1st respondents to apply for withdraws of the amount, which application should be made by Notice of Motion and which we or the appropriate Division Bench will consider on merits. In case of deposit, if the necessary Motion for withdrawal is not registered before 7th October 1988, Prothonotary to invest the amount deposited in Fixed Deposit with the State Bank of India or any Nationalised Bank for a period of three years in the first instance.

4. This disposes of the Notice of Motion. No costs in the appeal.