

(2002) 10 SC CK 0099
In the Supreme Court Of India
Case No : Civil Appeal No. 9346 Of 1994

Union of India (UOI)	Vs	APPELLANT
Citric India Ltd.		RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2003) 85 ECC 303 : (2002) 146 ELT 259 : (2003) 9 SCC 18

Hon'ble Judges : S. N. Variava, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : N.K. Bajpai, Hemant Sharma, K.C. Kaushik, Smita Inna, B. Krishan Prasad, M.L. Lahoty, Paban K. Sharma, Dipak Mundra, M. M. Kashyap, Prem Sunder Jha, Sonu Bhatnagar, Ajay Agarwal, Amit Bhagat and Rajan Narain, for the Appellant;

Final Decision : Partly Allowed

Judgement

1. This appeal is against the judgment of the Bombay High Court dated 21st October, 1992. The question before the Court was whether citric acid manufactured by the respondents herein was covered by Notification No. 55/1975-C.E., dated 1st March, 1975, as amended by Notification No. 62/1978, dated 1st March, 1978.
2. The respondents claimed benefit of the aforesaid Notifications and refund of amounts paid. This claim was disallowed.
3. They, therefore, filed an appeal before the Tribunal. The Tribunal by its order dated 14th February, 1985 noted that the Department did not challenge the claim that the citric acid, manufactured by the respondents, was a pharmacopoeial standard acid. In spite of this, the Tribunal held that before exemption can be claimed under this Notification it must be shown that the end-use was for the manufacture of drugs. The Tribunal, therefore, remitted the matter back for determination as to what quantity was being used for the manufacture of drugs. The Tribunal held that the respondents would only be

entitled to exemption on the quantity of citric acid used for manufacture of drugs.

4. Against this order of the Tribunal, the respondents have filed Civil Appeal No. 901 of 1987 which is also on board today. They also filed a writ petition in the Bombay High Court being W.P. No. 1897 of 1985. In the writ petition, the impugned judgment dated 21st October, 1992 came to be passed. It has been held that the Notification does not specify any end-use. It has been held that the benefit of the Notifications was available without any reference to the end-use. It appears that before the Bombay High Court, a judgment of this Court reported in 1988 (38) E.L.T. 564 (Collector of C.E., Guntur v. Andhra Sugar Ltd.) was cited. In respect of this judgment, the Bombay High Court held as follows :

"Shri Desai referred to the decision of the Supreme Court reported in 1988 (38) E.L.T. (Collector of C.E., Guntur v. Andhra Sugar Ltd.) to urge that the requirement of end-use though not built into the exemption notification, is not only implied but also becomes imperative in a situation when the product has uses other than drug intermediate. The learned counsel submitted that this is the ratio laid down by the Supreme Court. The submission is not accurate. On careful perusal of the entire judgment of the Supreme Court, it is obvious that the observations set out in the head-note are not the findings or conclusions of the Supreme Court. The issue before the Supreme Court was whether the Acetic Anhydride manufactured by the respondents and sold to drug manufacturers is eligible to benefit of exemption under Notification No. 55/75 as amended by Notification No. 62/78 as drug intermediate. The manufacturer had succeeded before the Tribunal and the appeal was carried to the Supreme Court by the Collector. The Supreme Court in paragraph 2 of the judgment observed that the question is 'was the item manufactured a drug or an intermediate in terms of the notification'. In paragraph 6 of the judgment, the Supreme Court noted that on the facts of the case that Acetic Anhydride manufactured was used in the manufacture of the drugs. In view of the finding of fact noticed by the Supreme Court, the question as to whether the end-use of the manufactured product can be considered to determine levy of duty or benefit of exemption notification did not come up for consideration. The Supreme Court referred to the decision of the single Judge of Karnataka High Court and where the learned Judge had quoted the observations of Government of India in a revision petition to the following effect :

"In the Government's view this requirement of end-use, though not built into the exemption notification, is not only implied but also becomes imperative in a situation where the product is used other than as drug intermediate."

It is therefore obvious that the Supreme Court has not laid down any such principle, but the head-note merely carves out what was quoted in the order passed by the Government in the revisional jurisdiction and which was noted by the single Judge of the Karnataka High Court. In our judgment, the reliance on the decision of the Supreme Court in these circumstances is not accurate. In our judgment, the petitioners are entitled to the relief."

5. In our view, this civil appeal can be disposed of on a very short point. In this case, as already mentioned above, the Department did not deny that the citric acid manufactured by the respondents was a pharmacopoeial standard acid. The High Court also records, in paragraph 7 of the impugned judgment, that the Department did not challenge the finding of the Tribunal that the product was a drug, drug intermediate or pharmaceutical in nature. As this factual position is not disputed, it becomes clear that the citric acid manufactured by the respondents is entitled to the benefit of the Notifications. In such cases where the factual position is admitted, no question arises of ascertaining the end-use. We, therefore, dismiss this appeal on this short point.

6. We clarify that we have not dealt with the question as to whether or not end use is to be considered in deciding whether an intermediate of a particular drug, medicine or pharmaceutical is entitled to the benefit of the Notifications. We also express no opinion whether the Bombay High Court was right in holding that judgment of this Court in Andhra Sugar Ltd.'s case did not lay down the principle that the requirement of end use is implied in the Notification.

7. There will be no order as to costs.

Civil Appeal No. 901 of 1987

8. In view of our order in C.A. No. 9346/1994, nothing survives in this appeal. This appeal stands disposed of accordingly.