

(2001) 08 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 4416 of 2001 and W.M.P. No's. 6235 and 19393 of 2001

Velvette International Pharma Products Ltd.

APPELLANT

Vs

C.C.E., Chennai-II

RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 82 ECC 58 : (2002) 139 ELT 527

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : K. Jayachandran, for the Appellant; V.T. Gopalan, Addl. Solicitor General for S. Udayakumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed for issuance of a writ of certiorari to call for the records relating to the order passed

by the first respondent in Order-in-Original No. 22/2000 (C. No. V/15/47/96 Cx. Adj.), dated 31-10-2000 and to quash the same as illegal,

arbitrary and without jurisdiction and contrary to the principles laid down by the Supreme Court in its decision reported in 1994 (99) E.L.T. 500.

2. The petitioner is a manufacturer of the product ""Nivaran 90"" which has been classified and declared by the petitioner with the Central Excise

Department as a Ayurvedic medicine under Chapter , sub-heading 3003.30 of Central Excise Tariff Act and totally exempted from excise duty by

virtue of Notification No. 32/89, dated 1-3-89 and 9/93, dated 1-3-1993. On a specific intelligence, the officers attached to the first respondent

conducted a search of the factory of the petitioner on 11-11-1993 and obtained

statements from the staff working in the office of the petitioner-

Samples of raw materials as well as the finished products were drawn for obtaining test report by the Chemical Examiner. The Chief Examiner,

Chennai Customs House gave a report that the ingredients used in the manufacture of the product are Ayurvedic in nature. The first respondent

issued a show cause notice dated 19-5-1996 based on the statement proposing to demand duty for the period from 1-5-91 to 28-2-1994 by

invoking the extended period of limitation u/s 11A of the Central Excise Act. As against the show cause notice, the petitioner filed Writ Petition in

WP. No. 14736 of 1996 before this Court for issuance of writ of mandamus for bearing the respondents from classifying the product under

Chapter sub-heading 3003.10. However, the writ petition finally disposed of with specific direction to the respondents to proceed with the

adjudication proceedings and pass final orders and thereafter make a demand with regard to the differential duty.

3. The case of the petitioner is that without taking into consideration the decision of this Court dated 24-11-1998, the first respondent passed on

Order-in-original No. 22/2000, dated 23-11-2000 assuming jurisdiction to classify the product and to demand duty. As against this, present writ

petition is filed, it has been admitted on 9-3-2001. Interim stay has also granted.

4. The respondents filed vacate stay petition wherein it is stated that as against the very same impugned order, the petitioner also filed an appeal

before the CEGAT and the matter is pending. The same is suppressed by the petitioner and obtained interim order. Learned Counsel for the

petitioner has submitted that though the petitioner is supported by an order of the Supreme Court in his favour as to the merits of the case, that the

Nivaran"" has to be classified as a Ayurvedic medicine since the Madras Bench of the CEGAT has taken contrary view, he will not get any

favourable order before the Tribunal that is why he has filed the above writ petition.

5. Whatever may be the reason, when admittedly the appeal is pending with regard to the classification, it is better for the petitioner to approach

the authorities concerned who is rather more informed about the classification of the particular products. Moreover, having filed an appeal, the

petitioner cannot maintain the present writ petition.

6. However, the petitioner expressed apprehension since the Madras Bench of the CEGAT already has taken a view against the petitioner in spite

of the Supreme Court decision, the petitioner may not get fair and reasonable opportunity, instead the CEGAT would follow its own orders. If the

order of the Supreme Court, is in favour of the petitioner, no Tribunal or Court, including this Court, cannot go against the Judgment of the

Supreme Court. The Judgment of the Supreme Court is binding all the Tribunals and Courts. But depending upon the facts of each case, the

applicability of the Supreme Court judgment could be decided. However, in order to do complete justice and to see that Justice not only be done

but also seems to have been done, the appeal pending before the Madras Bench of the CEGAT may be transferred to Bangalore Bench for

adjudication, so that the petitioner will also without any apprehension as argued by them argue the matter.

7. Hence, while dismissing the writ petition, a direction is issued to the CEGAT Chennai Bench to transfer the appeal of the petitioner to Bangalore

Bench for disposal. It is for the petitioner to approach the Chennai Bench of CEGAT and get the appeal transferred to Bangalore Bench and get

the appeal disposed off.

8. With the above observation, the writ petition is dismissed. Consequently, connected WMPs are also dismissed. No costs.