

Kushal Confectionery and Pharma Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-1999

Reported in : (2000)(116)ELT271TriDel

Appellant : Kushal Confectionery and Pharma

Respondent : C.C.E.

Judgement :

1. In this appeal filed by M/s. Kushal Confectionery & Pharma Ltd., the issue for our consideration is whether the products "Huny Herb", "Churyum drops" and "Tazza" were ayurvedic medicaments falling under sub-heading 3003.30 of the Central Excise Tariff or were classifiable under sub-heading No. 1704.90 as "Sugar confectionery (including white chocolate), not containing cocoa other than chewing gum". During the period October, 1989 to March, 1990, the appellants had cleared these three products at nil rate of duty under sub-heading No. 3003.30. The Assistant Collector, Central Excise, Jammu, after taking note of the report of the Chemical Examiner and the nature of the products, their use and marketability held that these products did not satisfy the definition of ayurvedic medicament and were items of sugar confectionery and he confirmed the demand of Rs. 66,592.73. On appeal, Commissioner of Central Excise (Appeals), Chandigarh, after a detailed discussion of the product in dispute and after referring to the test of common trade parlance and after referring to the case law on the subject, observed that even if the individual ingredients find mention in the ayurvedic texts, if the goods are not specifically mentioned in the ayurvedic books

or formulations and when the goods are not known by common user as ayurvedic medicine, for tariff purposes they could not be called as medicament. He observed as under :- "It has already been discussed that the products "Huny Herb", Churyum & Tazza are not mentioned in ayurvedic texts, further these are not sold in the name as specified in the texts. Therefore I would prefer to adopt the judgment of CEGAT in the case of C.C.E. v. Warner Hindustan Ltd. and hold that the most appropriate classification of this product would be under CET sub heading 1704.90." 2. When the matter was called, no-one appeared for the appellants. A notice for today's hearing had been issued on 6-8-1999. A copy of the notice had also been endorsed to the counsel on record. The matter had earlier come up on 11-6-1999 when on the request of the appellants, the matter was adjourned to 28-7-1999. On 28-7-1999, again the appellants prayed for adjournment and the matter was fixed for hearing for today i.e. 13-9-1999. When the matter was called, no-one appeared. There is no request for adjournment. It is an old matter in which the demand relates to the period October, 1989 to March 1990. As the matter is very old and as sufficient opportunities had already been given to the appellants to present their case, we are proceeding to deal with the matter on merits after hearing Shri Ravinder Babu, Departmental Representative.

3. We have carefully considered the matter and had gone through the facts on record. The products in dispute are Huny Herb, Churyum drops and Tazza. The appellants were also engaged in the manufacture of hard boiled candies falling under Chapter 17 of the Central Excise Tariff.

These three products under dispute, according to the chemical analysis, were preparation of sugar with some minor ingredients and were in the form of Lozenge. It was alleged that the goods were sugar confectionery and the benefit of exemption available to ayurvedic medicaments had been wrongly availed.

4. The Commissioner, Central Excise had observed that these products were taken not by sick persons but by ordinary persons in everyday use.

They were not for any specific ailment and were sold in general confectionery shops. He had also observed that the fact that some of the ingredients in these products find mention in ayurvedic texts are not enough to classify them as

medicament. He had taken a view that the classification of such items had to be done on the basis of common usage of the product. The product was found to be consumed by persons for changing the taste of the mouth and not for prevention or curative purposes on the basis of the prescription given by the registered ayurvedic practitioners. He had observed that these products were sold in any kiriyana shop and not in chemist shop based on prescription given by ayurvedic doctors.

5. He had given detailed reasonings as to why these products cannot be considered as medicament for the purposes of Heading No. 3003.30 read with Notification No. 75/94-C.E., dated 29-3-1994.

6. The appellants had not placed on record as to whether these products are used for specific ailments. *Shree Baidyanath Ayurved Bhawan Ltd. v. Collector of Central Excise, Nagpur and Ors.*

reported in [1995 (10) RLT 327 (S.C.)] had agreed with the view taken by the Tribunal that in interpreting statutes like the excise act, the primary object of which is to raise revenue and for which purpose, various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say the meaning attached to them by those using the product. The Apex Court also extracted the observations of the Tribunal with agreement as under :- "So certificates and affidavits given by the Vaidyas do not advance the case of *Shri Baidyanath Ayurved Bhawan Limited* in the absence of any evidence on record to show and prove that, the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a toilet requisite".

The Apex Court expressed agreement with this line of reasoning of the Tribunal and held that medicines are prescribed by medical practitioners and are used for a limited time and not everyday unless it is so prescribed to deal with the specific disease like diabetes.

Keeping in view the nature of the products, their use and the way they are marketed and treated by the common consumers, we agree with the view taken by

the learned Commissioner of Central Excise (Appeals) that the three products were correctly classifiable under sub-heading No.1704.90 of the Central Excise Tariff. In view of the above discussion, we do not find any merit in this appeal and the same is rejected.

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