

Ma Core Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Reported in : (2004)(174)ELT228Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Ma Core

Respondent : Commissioner of Central Excise

Judgement :

1. Appellants are an assessee under the Central Excise Act, 1944 and manufacturer and clear Medicaments falling under chapter 30 of the Central Excise Traffic Act, 1985. They had filed a classification list for the product Gripe Water, claiming the classification under 3003.39 of Traffic and started clearing the product at a rate of 8% advalorem as applicable under that heading. The differential duty of 10% i.e.

rate difference between. 3003.10 & 3003.30 was directed to be paid vide letter dated 18/3/98 by the Superintendent along with direction of further clearance to be made under 3003.10 duty rate. A show cause notice dated 15/5/98 was issued demanding duty differential from 1.1.1998 to 30.4.1998 along with penalty and interest proposal under 3003.10, same was confirmed. Commissioner (Appeals) upheld the order of the lower authority. Hence the appeal.

a) the product consist of only 2 ingredients known to Ayurvedic Sciences and mentioned in the authoritative books, out of several other ingredients, which are not so known eg : sodium methyl paraben, sodium propyl paraben, sodium bisulphate, sorbitol etc constitute the entity. Following the instruction of the Board no.

103/10190-CX 3, it was found that the product is not known as Ayurvedic medicines in common parlance.

b) All the ingredients present are mentioned in authoritative book(s) on Ayurveda, in the present case, there is no formula nor the relationship of various ingredients narrated in any text. The two Ayurvedic ingredients are mentioned in separate text books and there is no expert opinion to suggest the product to be Ayurvedic preparation. Hence the decision in the Maneesh Pharmaceutical Pvt.

Ltd. 1998 (97)ELT 152 was not applicable.

c) Adjudicator had not relied upon any factor of end use, therefore benefit of decision of Advani Oerlikon (1981 (8) ELT 432 (Bom) is not available.

d) Case of Panama Chemical Works (1992 (62) ELT 241) was not applicable since no notice was issued & passed in this case by Drug Controller.

e) In a batch, the two ingredients namely Sodium bi-carbonate & Dil Oil were not major ingredients. Sarjakakshara was hardly 1% and Satapuship Tel is 0.1% which are insignificant. Though it was held that Sarjakakshra and Satapuship Tel are mentioned in the books namely Ayurvedic formula of India and India Material Medica, however, that was not held to be reason to accept the claim of product to be an Ayurvedic preparation.

i) On food & Drug Administrations, approvals he found that the Annexure to licence issued by Joint Commissioner (Pune) Division only showed two ingredients namely Sarjakakshra and Satapuship Tel and white Sugar and since no evidence was produced to show that full disclosure has been made to that Administration FDA, the plea of the appellants on the score was not accepted.

a) The entity under consideration for classification is consisting of- i) Active ingredients as Sarjikakshra and Satapushpi (Dil Oil) known to and admitted to be mentioned in Ayurvedic Text Books and other ingredients is Sharkare (Sugar) ii) Inactive ingredients are sodium methyl paraben, sodium propyl paraben, sodium Meta bisulphate as preservatives, EDTA as stabiliser and Sorbitol as Base ingredient, sugar as sweetener and Oleoresins Ginger as a flavouring Agent.

There is no contest as regards, Active Ingredients to be Ayurvedic.

The inactive ingredients are found to be admittedly preservatives, anti bacterial agents and stabilisers used for keeping the preparation free of bacteria and stable over a period of time.

The active ingredients imparting Ayurvedic Medication have only to be reckoned and products having such constituents have to be classified under 3003.30 of the Centre Excise Tariff Act 1985, since they would give the essential characteristic for the entity under classification. That these Ayurvedic Active ingredients contribute the essential characteristics is not in doubt and contest. Following the decision in case of Herbal Products (2002 (146) ELT 123(Trib - Bangalore) where on funding the Food and Drug Administration of Government of Maharashtra, have accepted the entity to be an Ayurvedic Preparation and there is no expert opinion to restrict that understanding, the entities herein would merit classification only under 3003.30 of the schedule.

b) Following the law laid down by the Apex Court in the case of Atmrujan Ltd (1995 (72) ELT 500 SC, no reason can be found to deny the ingredient to be not Ayurvedic, merely because the same known as sodium bicarbonate to western science. The Larger Bench of the Tribunal in case of Himtag Ayurveda Udyog Kendra 2002(139)ELT610 (Trib LB) for overruling the proposition that formula not known to Ayurveda, on percentage of ingredients, we follow the decision of Panama chemicals work (192(62) ELT 241 (MP) to hold (the percentage findings of Active ingredients, is not material for classification and Sharma Chemical works (2003 (154)ELT 328) & 2003 (158)ELT 257 SC to hold the entity herein to be products Ayurveda Medicament classified only under 3003.30 of the schedule to Central Excise Tariff Act, 1985.

c) In view of the findings and as regards the classification under 3003.30, the other issues of time bar and demands made on a letter of Superintendent, no findings are not required to be discussed around, since duty under 3003.30 has been discharged and no further differential duty demands are being upheld. When duty demands are not being upheld, there is no question of a penalty.--

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