

Albert David Ltd. Vs. Union of India (Uoi) and anr.

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Court : Kolkata

Decided On : Nov-13-1963

Reported in : AIR1966Cal101

Judge : B.N. Banerjee, J.

Acts : [Constitution of India](#) - Article 226; ;[Central Excise Act, 1944](#); ;Drugs Act, 1940 - Section 3; ;[Finance Act, 1961](#); ;[Provisional Collection of Taxes Act, 1931](#) - Sections 3, 4 and 5; ;Central Excise Rules, 1944 - Rules 9(2) and 8(1)

Appeal No. : Matter No. 257 of 1962

Appellant : Albert David Ltd.

Respondent : Union of India (Uoi) and anr.

Judgement :

ORDER

B.N. Banerjee, J.

1. The petitioner company, Albert David Ltd., carries on business as manufacturer and dealer of medicines and drugs including patent or proprietary medicines.'
2. The expression 'patent or proprietary medicine' is defined in Section 3(h) (originally Section 3(d)) of the Drugs Act, 1940, in the following manner:

'Patent or proprietary medicine means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the Permanent Commission on Biological standardisation of the World Health Organisation or in the latest edition of the British Pharmacopoeia or the British Pharmaceutical Codex or any other pharmacopoeia authorised in this behalf by the Central Government after consultation with the Board,' By the Finance Bill 1961, the First Schedule to the Central Excises and Salt Act 1944 was sought to be amended in the following manner:

'13. In the First Schedule to the Central Excises and Salt Act, 1944,--

(a) ***

(b) ***

(c) ***

d) ***

(e) ***

(f) ***

g) after item No. 14, the following item shall be inserted, namely;

14A * **

14B ***

14C * **

14D * **

14E Patent or Proprietary medicines as defined in clause (d) of Section 3 of the Drugs Act 1940 (23 of 1940) not containing alcohol Ten Per cent. ad valorem.'

3. A Bill does not become law unless it goes through the Legislative Procedure as in Part V of the Constitution. Articles 107, 108 of the Constitution provide for introduction and passage of Bills by the Houses of Parliament, subject to the special provisions in respect of Money Bills and other Financial Bills. Clause (2) of Article 107 provides:

'Subject to the provisions of Articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both houses.'

Article 108, Clause (1) further provides,

'If after a Bill has been passed by one House and transmitted to the other House-

(a) the Bill is rejected by the other House, or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill;
or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has lapsed by reasons of a dissolution of the House or the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill.'

Article 111 provides for assent to Bills by the President after their passage by the Houses of Parliament, Money Bills and other financial Bills are, however, governed by a Special procedure, which is to be found in Articles 109, 110 and 117 of the Constitution.

4. The Finance Bill of 1961 was a Money Bill and required to be passed under the prescribed procedure, before it was to become the law of the land. The Bill was duly passed by the Parliament, received the assent of the President, on April 29, 1961, and was published for general information in the Gazette of India Extra-

ordinary on the same day. The Act contained the proposed amendment to the First Schedule of the Central Excises and Salt Act in the identical form as in the Bill.

5. Although the Bill did not become an Act until April 29, 1961, the Central Government was entitled to make the provisions of clause 13(g) item 14E of the Bill operative with immediate effect, under powers conferred upon it by the [Provisional Collection of Taxes Act, 1931](#). The aforementioned Act was passed, as its preamble shows, 'to amend the law providing for the immediate effect for a limited period of the provisions in Bills relating to the imposition or increase of duties of customs or excise.' Sections 3, 4 and 5 of the Act provide as follows:

'3. Power to make declarations under this Act:

Where a Bill to be introduced in Parliament on behalf of Government provides for the imposition or increase of a duty of customs or excise, the Central Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have Immediate effect under this Act. 4. Effect of declarations under this Act, and duration thereof:

(1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced.

(2) A declared provision shall cease to have the force of law under the provisions of this Act-

(a) when it comes into operation as an enactment, with or without amendment, or

(b) when the Central Government, in pursuance of a motion passed by Parliament, directs, by notification in the Official Gazette, that it shall cease to have the force of law, or

(c) if it has not already ceased to have the force of Law under Clause (a) or Clause (b), then on the expiry of the 'sixtieth day' after the day on which the Bill containing it was introduced.

5 Certain refunds to be made when declarations cease to have effect:

(1) Where a declared provision comes into operation as an enactment in an amended form before the expiry of the 'sixtieth day' after the date on which the Bill containing it was introduced refunds' shall be made of all duties collected which would not have been collected if the provisions adopted in the enactment had been the declared provisions;

Provided that the rate at which refunds of any duty may be made under this sub-section shall not exceed the difference between the rate of such duty proposed in the declared provision and the rate of such duty in force when the Bill was introduced.

(2) Where a declared provision ceases to have the force of law under clause (b) or clause (c) of Sub-section (2) of Section 4, refunds shall be made of all duties collected which would not have been collected if the declaration in respect of it had not been made.'

The requisite declaration, under Section 3 of the Provisional Collection of Taxes Act, was made in the Finance Bill 1961, in the following language,

'It is hereby declared that it is expedient in the public interest that the provisions of Clauses II, 12, 13 and 15 of the Bill shall have immediate effect under the [Provisional Collection of Taxes Act, 1931](#).'

6. In order to make the provisional collection of excise duty on 'Patent or Proprietary Medicines', manufactured by the petitioner company effective, it is alleged in paragraph 5(b) of the affidavit-in-opposition, the Central Government decided as follows:

'That stocks of newly excisable commodities at the midnight of February 28/March 1, 1961, in a fully manufactured condition, even if lying within the precincts of the producing factories, will not be dutiable. * * that the duty will be levied only on such goods the manufacture of which is completed after midnight of February 28/March 1, 1961. The goods Were not to be considered as fully manufactured unless at the midnight of February 28/March 1, 1961 they were ready for delivery.'

7. So as to ascertain the goods which stood fully manufactured at the midnight of February 28/March 1, 1961 and were ready for delivery it was necessary to have a complete stock-taking of goods in the petitioner's factory. It is alleged in paragraph 5(c) of the affidavit-in-opposition, that a stock-taking of all goods in the petitioner's factory was done in the first week of March, 1961. Apart from characterising the statements in paragraph 5(b) and (c) of the affidavit-in-opposition as vague and mislead, the affidavit-in-reply does not contain anything more. I am, therefore, inclined to accept statement in the affidavit-in-opposition as correct.

8. In order to particularise the other pharmacopoeias, mentioned in Section 3(h) of the Drugs Act, 1940, the Central Government issued the following two notifications:

'Notification No. F-163/59D, dated 24th March, 1961, S. O. 701. In pursuance of clause (h) of Section 3 of the Drugs Act, 1940 (23 of 1940), the Central Government, after consultation with Drugs Technical Advisory Board, hereby authorises the following pharmacopoeias for the purposes of Clause (h) of the said section, namely: The Indian Pharmacopoeia, the Pharmacopoeia of United States, the National Formulary of the United States, the International Pharmacopoeia and the State Pharmacopoeia of the Union of Soviet Socialist Republics.'

Notification No. 106/1961, dated 20th April, 1961

'G. S. H. 578. -- In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, as in force in India and as applied to the State of Pondicherry, the Central Government hereby exempts such medicines and preparations falling under item No. 14E of the First Schedule to the Central Excises and Salt Act, 1944 (10 of 1944) from the whole of the duty of excise leviable thereon as are included in:

(i) the National Formulary of India

(ii) the Dental Formulary of U. S. A. and

(iii) The British Veterinary Codex;

Provided the preparations included in the National Formulary of India are marketed only under the name given in the National Formulary followed by the letters I. N. P.' Both the above-quoted notifications were produced before me, during the course of the hearing, and copies thereof were collectively marked as Exhibit I by consent.

9. It is noteworthy that the two notifications above quoted were not published on March 1, 1961. Therefore, the petitioner company might have been, on March 1, 1961, under some doubt about what exactly Patent or Proprietary Medicines meant and included, because the other Pharmacopoeias had not been at that time prescribed.

10. The petitioner company states that it was asked by the Central Excise Department, early in March, 1961, to declare Patent and Proprietary medicines of its manufacture, falling within the definition of the expression as in the Drugs Act. Feeling difficulty in the matter of such declaration, because of absence of particularisation of all the Pharmacopoeias, the petitioner company states, it consulted Central Excise Superintendent, the Deputy Superintendent and also the Excise Inspector posted in the factory of the Company and submitted a complete list of its products for clarification of the point. In paragraph 4 of the petition the petitioner company states that the said list was accepted by the Assistant Collector of Excise, Calcutta Division III, without reservation and without clarification. The petitioner company also states that it took for granted that the list submitted by it was passed and accepted by the Central Excise authorities. It is difficult to understand, from the averments in paragraph 4, what the petitioner company took for granted, unless of course it thought that none or the products mentioned in the list fell within the definition of Patent and Proprietary Medicine and was not excisable as such. Under the belief aforesaid, the petitioner company alleges, it took out, sold and delivered large quantities of its preparations, after March 1, 1961, without payment of excise duty and the said preparations were allowed to pass out, by the Excise Inspector attached to the petitioner's factory, without realisation of duty.

11. The aforesaid allegations in paragraph 4 of the petitioner are not, however, admitted in the affidavit-in-opposition. In paragraph 7 of the affidavit-in-opposition it is stated as follows:

'I deny each and every allegations contained in paragraph 4 of the petition. In particular I deny that the petitioner company submitted to the Central Excise authorities complete product list and price list and vademecum for their clarification as alleged or that the same were unreservedly accepted by me as alleged. I also deny that the Central Excise authorities never raised any objection as alleged or that no clarification regarding the definition of the term 'Patent and Proprietary Medicines' came from the Central Excise authorities as alleged. I further deny that the petitioner was entitled to take it to granted that the list submitted by the petitioner company was passed or accepted by the Central Excise authorities as alleged or at all.'

In paragraph 8 (b) of the affidavit-in-opposition it is further stated as follows:

'At the time of stock taking of the goods in the petitioner's factory in the first week of March, 1961, the petitioner declared all its products whether excisable or non-excisable and submitted price lists and vademecum. This stock taking was done to ascertain the medicines which were fully manufactured at the midnight of February 28/March 1, 1961 and were liable to be cleared without payment of duty.'

In paragraph 10(a) of the affidavit-in-opposition it is also stated as follows:

'The petitioner submitted an A. L.-4 application on March 6, 1961 for a licence to manufacture excisable goods. Along with the said A. L.-4 application the petitioner enclosed lists 'A', 'B' and 'C' showing amongst other things about forty-six varieties of 'excisable goods to be manufactured in column I of list 'A' I crave leave to refer to the said A. L.-4 application and the annexures thereto at the time of hearing. On or about March 9/10th, 1961 the petitioner submitted a revised list of about twenty items of their products, in modification of the list of about forty-six items submitted on or about March 6, 1961 along with the said A. L.-4 application, declaring the said twenty items as excisable goods under Tariff item 14E. As required by Rule 48 the petitioner executed a B-2 bond undertaking to produce for

charge of duty or otherwise account to the satisfaction of the collector all the excisable goods manufactured in their factory.'

12. In paragraph 5 of the affidavit-in-reply the aforesaid statements in the affidavit-in-opposition are controverted in the following manner:

'With reference to paragraphs 7, 8 and sub-paragraphs of paragraph 8 and paragraphs 9 and 10 of the said affidavit I say that the contents thereof are not true and correct. That the petitioner submitted product List and Price List and Vademecum for the clarification by the Respondents will appear from the correspondence copies whereof has been annexed to the petition and will also appear from the said letter dated the 23rd of May, 1961 whereby the respondents called upon the petitioner to make additions or alterations in their declaration of excisable medicine made on the 9/10th of March, 1961. The respondents deputed their agent and Inspector to the petitioner's factory for the purpose of checking and passing the goods as excisable and non-excisable from the very beginning of March 1961 unto the end of May, 1961 and as such the respondents are estopped from questioning goods passed by the Inspector as non-excisable between that period. The petitioner company was bound to obey the orders of the respondents and have all through obeyed the same in passing their goods through their Inspector and after goods have been passed as non-excisable the same have been sold as such and now the petitioner cannot turn round and say that duty should be levied on goods which their Inspector have passed as non-excisable and has been sold as such.'

13. Reading the petition, the affidavit-in-opposition and the reply thereto, I find that there is a good deal of want of frankness in the statement made in the body of the petition. In the first place, there was a declaration of excisable Patent and Proprietary medicines made by the petitioner company on March 9/10, 1961, which appears from its letter to Superintendent, Central Excise, hereinbelow quoted:

'Re; Excisable goods manufactured by us.--With reference to the list of excisable goods attached to our A. L.-4 application dated 6-3-61, we have to submit herewith a revised list of our products which should be treated as excisable items under T.

C. 14E.

This list has been compiled after a thorough scrutiny and checking of all the ingredients of individual items.'

14. In the next place, the petitioner company itself knew that it had cleared excisable drugs as non-excisable ones, during March 1, to May 31, 1961, under some sort of confusion. This appears from its letter, dated August 9, 1961, to Superintendent, Central Excise, hereinafter set out:

'The medicines as per attached list were cleared from the Factory as non-excisable ones during the period from 1st March to 31st May, 1961 due to confusion arising for non-clarification of the term 'patent and proprietary medicines'.

The said medicines were sold at prices as per the printed Price List dated 1-9-60.

The prices of the medicines which were not declared in the said price list are declared in an attached list. Please note that we have allowed discount to our customers ranging from 50 per cent to 15 per cent.'

15. I now turn to the letter, dated May 23, 1961, written by the Inspector of Central Excise to the petitioner Company, referred to in the affidavit-in-reply. The said letter is quoted below:

'Dear Sirs,

You are requested to examine all of your preparations in the light of the following Decisions on the above subject, and to make additions or alterations, if necessary, of your latest declaration of excisable medicines dated 9/10-3-61 immediately.

A. All Patent or Proprietary medicines which are manufactured according to the latest editions of the following recognised pharmacopoeias are exempted from the said levy:

1. The Indian Pharmacopoeias.

2. The International Pharmacopeias.
3. The British Pharmacopoeia,
4. The British Pharmaceutical Codex.
5. The United States Pharmacopoeia.
6. The National Formulary of the United States.
7. The State Pharmacopoeia of the U. S. S. R.
8. The Dental Formulary of U. S. A.
9. The British Veterinary Codex; and
10. The National Formulary of India --provided the preparations included in the National Formulary of India are marketed only, under the name given in the National Formulary * * * * * followed by the letters 'I. N. F.'

B. In case of composite preparations containing several ingredients all of which are official in various pharmacopoeias but the composite preparation by itself is not official under provisions of (A) above it would correctly be termed as 'patent or proprietary medicine' for the purpose of Central Excise levy;

C. For the purpose of exemption of levy on tablet, syrup or injection the tablet, syrup or injection by itself should appear in any recognised pharmacopoeia and not merely the drug in its pure form;

D. The injectibles are to be treated as for internal use for the purpose of this levy.'

16. On June 1, 1961, the petitioner company replied to the letter, dated May 23, 1961, to the following effect:

'In compliance to your latter No. I. R. No. 12, dated 23rd May, 1961, we are submitting the following revised lists:

(a) Preparations manufactured not exactly according to Pharmacopoeias recognised by Central Excise.

(b) Preparations manufactured exactly according to Pharmacopoeias recognised by Central Excise.

(c) Alcoholic and/or indigenously prepared preparations.'

In revised list (a), the petitioner company included names of thirty items of drugs; in revised list (b), the petitioner company included the names of seventy-two items of drugs; in revised list (c) the petitioner company included names of four more items of drugs.

17. Thereafter, on August 23, 1961, the respondent Assistant Collector of Central Excise, proceeding on the basis of the admission made by the petitioner company itself that it had cleared excisable drugs between the period March 1 to May 31, 1961, without payment of duty, assessed clearances made by the petitioner company to excise duty and by his letter, dated August 23, 1961 (Annexure B to the petition), demanded payment of a sum of Rs. 1,24,535.67 nP. The petitioner company at first replied to the letter, on August 28, 1961, merely stating that the same was receiving their attention and thereafter entered into a series of correspondence with the respondent Assistant Collector asking for reduction of imposition of excise duty in consideration of trade discounts allowed, by the petitioner to the purchasers, in respect of sale of excisable drugs. Such prayer is to be found in the letters addressed by the petitioner company to the respondent Assistant Collector, dated the 4th and 13th October, 1961, the 15th and 16th January, the 27th February, the 7th, 8th, 10th, 15th and 30th March and the 14th May, 1962 (all annexed to the petition). The respondent Assistant Collector acceded to the prayer of the petitioner company and by his letter, dated March 24, 1962, at first reduced the claim for excise duty to Rs. 1,20,363-30 nP. and on further representations by the petitioner company next reduced the duty to Rs. 1,11,429-27 nP. by his letter dated May 8, 1962, and thereafter made a further reduction of the duty to Rupees 1,01,299-34 nP. being the sum admitted by the petitioner company, by its letter, dated May 14, 1962.

18. Having thus got all that it wanted by way of reduction of duty, the petitioner company instructed its solicitors to deny the liability for payment of excise duty altogether, on the alleged ground that the failure on the part of the Excise Authorities to clarify what was exactly meant by Patent and Proprietary medicine rendered the demand without jurisdiction. This the Solicitor for the petitioner company did on July 10, 1962. This objection was, however, overruled by the respondent Assistant Collector, by his order, dated July 17, 1962. The said order is quoted below:

'I have carefully examined the contentious raised in the Solicitor to the party's letter dated 10-7-62.

Under the law, it was the responsibility of M/s. Albert David to furnish correct and truthful information about the stock of medicines falling under the definition of Patent and Proprietary Medicines as laid down in the Finance Bill, 1961 and by failing to discharge this obligation, they virtually rendered themselves liable to penal action under Section 9(c) of the Central Excises and Salt Act, 1944. In view of the fact that no apparent fraudulent motive was noticed, a lenient view of the contravention of law was taken and a demand was raised for payment of duty on Patent and Proprietary Medicines which were cleared by them as non-excisable though for which they duly charged excise duty from their customers in the shape of surcharge at 10 per cent ad valorem as were revealed from the price verification reports and admitted in their letters dated 30-3-62 and 24-5-62.

If due to misdeclaration on the part of the licensee, certain medicines were declared as non-excisable the goods did not lose their excisable character.

I, therefore, hold that the demand raised is in order. It should be honoured within 10 days of receipt of this order.'

19. It is significant that at no stage earlier to July 10, 1962 did the petitioner company raise any dispute to the effect that drugs on which the excise duty was being imposed were not excisable drugs under the [Finance Act, 1961](#).

20. Unable to get further satisfaction from the respondent Assistant Collector, the petitioner moved this Court, under Article 226 of the Constitution, asking for a Writ of Certiorari for the quashing of the order, dated July 17, 1962, and obtained this Rule.

21. The grounds on which this Rule was issued may be grouped under the following heads:

A. that in the absence of any clarification of Patent and Proprietary Medicine, the demand was without jurisdiction; B. That the Clarification made on May 23, 1961, could not affect goods cleared prior to the said date without payment.

C. That the order, dated July 17, 1962, was arbitrary, capricious or mala fide or alternatively made without jurisdiction;

D. That the order was ultra vires Section 3(d) (now Section 3 (h)) of the Drugs Act.

E. That under Rule 9 (2) of the Central Excise Rules 1944, no duty was payable on goods cleared without payment of duty with the permission of the Excise Inspector.

F. The order dated July 17, 1962 was ultra vires Section 33 of the Central Excises and Salt Act.

G. That the order dated July 17, 1962 was erroneous on the face of it.

22. During the course of hearing of the Rule, Mr. M.N. Banerjee, learned Advocate for the petitioner Company, wanted to argue the following three additional points, namely,

(1) that the clarification contained in letter, dated May 23, 1961, was not made under the authority of the Central Government and was of no effect;

(2) that the clarification not having been made under Section 37 of the Drugs Act was of no value, (Marked with letter B);

(3) that paragraph 3 of the letter dated May 23, 1961 was an improvement upon Section 3 (h) of the Drugs Act and as such was of no effect and validity.

23. I allowed Mr. Banerjee to argue the aforesaid points, with due notice to the respondents.

24. In my opinion, there is a good deal of misconception contained in the grounds urged in support of the Rule. The liability of the petitioner company to pay excise duty on Patent and Proprietary medicine, as defined in the Dings Act, became an enforceable liability under the Provisional Collection of Taxes Act 1931, as soon as the Finance Bill 1961 was introduced in the Parliament. The definition of Patent and Proprietary medicines in the Drugs Act does not require much of clarification, excepting that the Central Government may add to the list of Pharmacopoeias mentioned in the definition. The petitioner company did not really need any such clarification, because, even without clarification, it declared the excisable Patent and Proprietary medicines manufactured by it (vide its letters dated 9th /10th March 1961 and 23rd May, 1961, hereinbefore set out) which were not recognised by the Permanent Commission of Biological Standardisation of the World Health Organisation or by the British Pharmacopoeia or by the British Pharmaceutical Codex. It is not the case of the petitioner company that when the other Pharmacopoeias were prescribed, on March 21, 1961 and April 20, 1961, its declarations became wrong because of the inclusion of some of its goods declared by it as excisable, in the other prescribed Pharmacopoeias. It is not also the case of the petitioner company that it was asked to pay duty on Patent or Proprietary drugs recognised by any of the Pharmacopoeias mentioned in Section 3(h) of the Drugs Act or authorised thereunder by the Central Government. The point that the definition of patent and proprietary medicine either required clarification or was not enforceable without clarification is not one of substance and must fail. It was the duty of the petitioner company to know the law, unless of course, because of the patent linguistic defect, the definition was unmeaning or ununderstandable or unascertainable. In my reading the definition does not suffer from any of the aforesaid types of defect. By insisting upon executive clarification of the legislative definition, the petitioner company was asking for too much and I do not make much of the grievance on this point.

25. The other grievance, namely, that the clarification of May 23, 1961, must not be given retrospective operation, should also fail on the line of reasons hereinbefore given. If the definition did not require any clarification, then any purported clarification made on May 23, 1961, was a redundancy or made for executive convenience or made at the request of the petitioner company. If that clarification went beyond the definition, it stood self-condemned being something done beyond executive competence. For the aforesaid reason I overrule the second branch of argument made by Mr. Banerjee as a piece of sophistry.

26. I now turn to the third ground of argument advanced by Mr. Banerjee. The order dated 17th July, 1962, does not appear to have been mala fide made. The Assistant Collector gave reasons why he was unable to give effect to the belated objection, made by the petitioner company that it was not liable to pay the excise duty at all. Whether those reasons are wrong I shall hereafter consider. But I am unable to uphold the criticism that the Assistant Collector acted either arbitrarily or in a mala fide manner in disposing of the criticism made by the petitioner company.

27. I now take up for consideration the fourth, fifth and sixth grounds of argument along with the three branches of additional argument advanced by Mr. Banerjee. I have already set out the clarification contained in the letter dated May 23, 1961. When Mr. Banerjee opened his arguments, the notifications dated March 24, 1961 and April 20, 1961, respectively made under the Drugs Act and the Central Excise Rules, were not in the record. It was, therefore, supposed that the clarification of May 24, 1961 was the performance of an Excise Inspector and that the said clarification had not the support of the notifications behind it. With the production of two notifications that supposition becomes wrong. I have therefore, to see whether the said notifications went beyond the definition as in Section 3 (h) of the Drugs Act. The first part (marked with the letter A) of the clarification letter merely repeats the names of the pharmacopoeias prescribed by the two notifications referred to above. The second part of the clarification letter (marked with letter B) states that compounds or admixtures of various drugs all recognised by the prescribed pharmacopoeias will not be exempt from payment of excise duties and shall be treated as patent or proprietary medicine. The third part of the clarification letter

(marked with letter C) states that drugs in their pure form recognise by the prescribed Pharmacopoeias, if converted into tablets, syrups or injections will be treated as excisable Patent and Proprietary medicines. The last part of the clarification letter (marked with the letter D) states that injectibles will be treated as drugs for internal use for the purposes of excise duty,

28. The first part of the letter (marked with letter A) is unexceptionable. It merely repeats what has been stated in the two notifications respectively made under the Drugs Act and the Central Excise Rules. The second part of the clarification letter (marked with letter B) is, however, alleged to be an improvement on the definition as in Section 3 (h) of the Drugs Act. In my opinion this criticism is erroneous. The British Pharmacopoeia contains a list of drugs with directions for their preparations. Pharmacists often combine drugs, prescribed by the British Pharmacopoeia or other pharmacopoeias and produce drugs bearing a patent or proprietary nomenclature. Let us take, for example, a commonly used drug known as ANACIN. The cover of that drug, containing the formula, was produced before me during the hearing. It appears that the said drug is a combination of the following drugs, all recognised by Pharmacopoeias, in different doses, namely:

Quinine-sulphate

Acetylsalicylic Acid

Phenacetin

Caffeine,

29. The component drugs are all to be found named in the British Pharmacopoeia of 1958 (vide Pp. 17, 108, 475 and 560). But the compound drug ANACIN does not find any place in the British Pharmacopoeia. This is because the doses of the different drugs used in the compound are the responsibility of the druggists. So also is the responsibility of the use of the 4 drugs together as a remedy for certain types of physical maladies. Then again, let us take the drug known as compound CODENE Tablet which contains:

Acetylsalicylic Acid

Phenacetiri

Codeine Phosphate

30. This will appear from page 177 of the British Pharmacopoeia of 1958. The component drugs are also recognised by the said Pharmacopoeia, vide pages 17, 175 and 475.

31. It will thus appear that certain drugs in their nascent form as also in their combinations are recognised by the British Pharmacopoeia while other combinations are not so recognised. The declared patent and proprietary medicines manufactured by the petitioner company, which are combination of several approved drugs, are not recognised by the British Pharmacopoeia under their patent and proprietary name. Therefore, those drugs do fall within the definition of patent and proprietary medicines within the meaning of Section 3(h). The aforesaid paragraph of the clarification letter does not therefore go beyond Section 3(h) of the Drugs Act. For the same reason recognised dings converted into tablets, syrups and injections in different doses, unless in that form recognised by proscribed Pharmacopoeia, do not escape payment of excise duty.

32. The next question for my consideration is whether the petitioner company escapes payment of duty, having had succeeded in clearing the excisable drugs without payment of duty. In my opinion, Sub-rule 2 of Rule 9 of the Central Excise Rules contains a complete answer to this. Sub-rule 2 is quoted below:

'(2) This Sub-rule prescribes the penalty for the contravention of the Sub-rule (1) and lays down that the person, who commits it breach of the Sub-rule (1) is required to pay the duty on the goods infringing provisions of the Sub-rule (1) and in addition becomes liable to a penalty upto rupees two thousand and the offending goods are liable to confiscation.'

33. It is amply clear from the said sub-rule that by removing excisable goods without payment of duty the offender does not escape the liability for payment of duty.

34. The criticism that the order, dated July 17, 1962, was ultra vires Section 33 of the Central Excises and Salt Act is a wholly misconceived argument. Section 33 reads as follows:

'33. Power of adjudication. - Whereby the rules made under this Act anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged.

(a) without limit, by a Collector of Central Excise;

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an Assistant Collector of Central Excise: Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in Clause (b) of this section and may confer on any officer the powers indicated in Clause (a) or (b) of this section.'

35. The order, dated July 17, 1962, did not impose any penalty upon the petitioner company and the said section is wholly of (sic) levant consideration.

36. The criticism that the clarification letter dated May 23, 1961, not having had been made under Section 37 of the Drugs Act should be taken as of no value, is also of no substance. Section 37 of the Drugs Act reads as follows:

'37. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

37. The section is of irrelevant consequences in the context. I believe what Mr. Banerjee wanted to argue was that the clarification letter was ultra vires Section 37 of the Central Excises and Salt Act, which invests the Central Government with rule-making power. The clarification letter is no rule made by the Central Government. Therefore invocation of that section also will be equally inconsequential.

38. Although T am unable to accept any of the arguments made in support of this Rule by Mr. Banerjee, yet then I feel sympathy for the petitioner. The Excise Inspector attached to the petitioner's factory allowed excisable drug to be cleared without payment of excise duty in a thoughtless manner. If the excise duty had been realised on the drugs, the petitioner company could have added the duty to the price and realised the same from the purchasers. Since the drugs were allowed to be cleared without payment of duty, the petitioner had no occasion to get itself reimbursed in respect of the excise duty payable and is now put in the predicament when it has to pay the duty out of profits. This certainly works hard on the petitioner company. But T cannot help the petitioner on that ground. Law is an objective thing and there it stands, as enacted, even though it works hardship. A law which is hard has nevertheless to be obeyed.

39. For the reasons aforesaid I discharge the Rule but I make no order for costs.

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