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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

B.V. NAGARATHNA; J., UJJAL BHUYAN; J.

CIVIL APPEAL NOs. 6024-6028 OF 2009; JULY 26, 2023

COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD II *versus* **M/S. DENIS CHEM LAB LTD. & ANR.**

The Central Excise Act, 1944 - In order to determine whether a product would fall under the description of "Intravenous Fluids" so as to be eligible for exemption from excise duty, it is the composition of the product in question which is relevant and not whether the product is used for treatment of any particular disease. The veterinary products 'Calcium Borogluconate Injection (I.P.) (Vet.)' and 'Calcium Magnesium Borogluconate Injection (I.P.) (Vet.)' manufactured by the assessee fell under the description of "Intravenous Fluids", and thus were eligible for exemption from excise duty.

For Appellant(s) Mr. Siddhant Kohli, Adv. Mr. Mukesh Kumar Maroria, AOR Ms. Aakansha Kaul, Adv. Mr. Shiv Mangal Sharma, Adv. Ms. Chinmayee Chandra, Adv. Mr. Manish Pushkarna, Adv.

For Respondent(s) Mr. V. Lakshmikumaran, Adv. Ms. Charanya Lakshmikumaran, AOR Ms. Apeksha Mwhta, Adv. Ms. Falguni Gupta, Adv. Ms. Neha Chaudhary, Adv. Ms. Umang Motiyani, Adv.

O R D E R

These appeals are filed by the Revenue assailing order dated 13.10.2008 passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (hereinafter referred to as the 'CESTAT', for the sake of convenience).

By the said order, the CESTAT has observed that the exemption granted earlier by Notification dated 01.03.2000 (Notification No.6/2000) and the subsequent Notification dated 01.03.2001 (Notification No.3/2001), in the context of exemption from payment of excise duty given to intravenous fluids and later on stated as intravenous fluids, which are used for sugar, electrolyte or fluid replenishment, was in the nature of a clarification and the same could not receive a restricted meaning or interpretation while considering the said exemption, vis-a-vis the Notification dated 01.03.2001. Secondly, the Tribunal has stated that insofar as Chennai circle was concerned, the benefit of exemption was given and there was no further indication that the stand was revised thereafter.

Taking into consideration the letter of the Deputy Drug Controller dated 09.02.2004, wherein it was specifically stated that Calcium Borogluconate and Calcium Magnesium Borogluconate are considered as sources of electrolyte and these were part of intravenous fluids, which were essential products for which exemption was provided under the said two Notifications, the CESTAT held that the respondents/Assessees were eligible for exemption, as claimed and therefore the consequential reliefs and the benefits under the said notifications were granted. As already noted, being aggrieved by the said order, the Revenue has preferred these appeals.

We have heard Shri Siddhant Kohli, learned counsel appearing for the appellant and Shri V. Lakshmikumaran, learned counsel appearing for the respondents, at length and perused the material on record.

At the outset, it would be useful to refer to Notification No.6/2000 – C.E. dated 01.03.2000 in respect of Serial No.47-A under the Chapter Heading No./Sub-Heading No.30. As per the said Notification, exemption was provided from payment of excise duty insofar as the products falling under the description of intravenous fluids. Subsequently, by Notification No.3 of 2001 – C.E. dated 01.03.2001 insofar as the subject products are

concerned, it was stated as “Intravenous Fluids, which are used for sugar, electrolyte or fluid replenishment”.

Learned counsel for the appellant contended that the object of issuing the Notification dated 01.03.2001 insofar as intravenous fluids are concerned, was in order to specifically indicate as to for which intravenous fluids, as such, the exemption was available. In other words, the contention was that if an intravenous fluid is used for sugar, electrolyte or fluid replenishment *per se* and composition of the said product being such that it is used only for the purpose of replenishment and not for any other purpose, then the benefit of exemption would be allowed.

In this context, it was contended that the product of the Assessees contained Boric Acid and Chlorocresol and, therefore, the purpose of the said product was for treatment of veterinary diseases such as milk fever, Tetany, liver damage etc. In view of the addition of the aforesaid chemicals to the said product, it would not be used for fluid replenishment *per se* but it is in the nature of a medicinal product, which was administered to animals such as cattle through the medium of intravenous fluids and, therefore, CESTAT was not right in referring to letter dated 09.02.2004 issued by the Deputy Drug Controller for the purpose of grant of exemption.

Learned counsel for the Revenue exhaustively took us through the order in original and contented that even according to the Assessees, the product in question is not for fluid replenishment *per se.* That it is used for the treatment of certain diseases and therefore, the subsequent Notification dated 01.03.2001 would restrict the benefit of exemption to only those instances when the said product is used for fluid replenishment and not otherwise.

Learned counsel for the Revenue also drew our attention to certain judgments passed in this regard, which were in favour of the Revenue as well as against the Revenue and also brought to our notice another judgment of this Court in the case of CCE & Customs vs. Parenteral Drugs (I) Ltd. (2009) 14 SCC 342, wherein this Court had remanded the matter to CESTAT to consider the same on the particular aspect of the composition of the product and also as to whether the same was a Schedule `H’ drug or not. In that regard, it was urged that since there is no detailed discussion in the impugned order, the matter may be remanded to CESTAT for giving a finding on the particular issue which arises in these appeals.

Per contra, learned counsel appearing for the respondent drew our attention to the specific words used in the Notification dated 01.03.2001 in the context of the composition of the product in question to contend that the product in question, namely, Calcium Borogluconate and Calcium Magnesium Borogluconate are essentially composed of sugar and electrolytes which are meant for fluid replenishment. In that regard, our attention was drawn to Annexure A-11, which is a copy of the license issued to the Assessees on 25.07.2006 by the Commissioner, Food and Drugs Control Administration, Gujarat State wherein for Large Volume Parenterals (LVP), which are the products in question, the composition having been clearly stated, for which the license has been granted. In this regard, it was stated that Calcium Borogluconate Injection I.P (Vet) contains, *inter alia,* Calcium Gluconate and the proportion of boric acid is very minimal. Similarly, in respect of the product Calcium Magnesium Borogluconate Injection (I.P.) (Vet.), the proportion of boric acid to calcium was 2.26 to 1 and Chlorocresol I.P. was only 0.1% of boric acid, whereas, in Dextrose Anhydrous I.P. was 20% boric acid. The reference to the said document was in response to the submission of the learned counsel for the Revenue that addition of boric acid and chlorocresol to the product in question

would clearly indicate that they were antiseptic in nature, which was a line of treatment to be given for veterinary purpose and to treat particular diseases in animals.

In the above context, the contention of learned counsel for the Assessees was that the addition of boric acid and chlorocresol was only to enhance the shelf life product, as such, and to ensure that the product does not decompose with the passage of time. It was also submitted that since the necessary license was also sought and granted, it cannot be a case where the Assessees were manufacturing these products without license and there was an attempt to escape the payment of excise duty under the shelter of the exemption notification.

It was also contended that ultimately the composition of the product in question was nothing but what is in an intravenous fluid in the sense that it consists of amino acids, sugar and electrolytes and is purely for the purpose of fluid replenishment and not a medicine for treatment of any disease as such. It was submitted that merely because the intravenous fluid is given during the course of treatment of certain diseases, it would not make it a medicinal product. That such a product can be used both as a preventive measure and also during the course of treatment of certain diseases in order to preserve the electrolytes and fluids in animals that suffer from certain diseases.

Having regard to the aforesaid submissions and the material on record, we can only say that intravenous fluids or solutions are made of chemicals, such as, sugar, electrolytes or amino acids, and are necessary for the circulatory system to assimilate them and for the purpose of maintaining the electrolyte balance in the circulatory system of the body, whether of a human or an animal. The object and purpose of the grant of such an exemption is to ensure that these products are available at a reduced price and that therefore, they can be easily accessible to be used for human beings or animals readily as it is in the nature of a life-saving product. We find that sufficient material was produced by the Assessees in response to the show cause notice as well as at the time of being heard before the order of the Commissioner was passed in order to demonstrate the nature of the subject product. No doubt, the order in original is a lengthy one and takes into consideration the material which was produced by the respondents/Assessees as well as the material that was produced by the Revenue. However, there appears to be a mis-impression in the mind of the Authority while considering whether, the Assessees herein were entitled to the benefit of exemption or not. The simple test that ought to have been followed was to note the composition of the product in question and not as to whether it was being used for treatment of any particular disease. A reading of the license issued to the Assessees, makes it apparent that the composition of the product predominantly consists of Glucose (sugar) and electrolyte (minerals) which are essentially for the purpose of replenishment, not necessarily only used at the time of treatment for any particular disease but also as a preventive measure. Mere addition of Boric Acid and Chlorocresol, that too in minimal proportion, would not alter the character of the product. The product retains its essential purpose of replenishment; and not partake the character of a medicine used only for the treatment of any particular disease.

In that view of the matter, we find that the CESTAT was justified in holding that the respondents/Assessees were entitled to the benefit of exemption as per the Notifications dated 01.03.2000 and 01.03.2001. We do not find any merit in these appeals. The Civil Appeals are dismissed.

Pending application(s) shall stand disposed of.