

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3493/2004

COMMNR. OF CENTRAL EXCISE, VADODARA

Appellant(s)

VERSUS

M/S. ALEMBIC CHEMICAL WORKS CO. LTD.

Respondent(s)

(with appln. (s) for stay and office report)

Date : 01/04/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. K.Radhakrishnan,Sr.Adv.
Mr. Rajiv Nanda,Adv.
Ms. Aruna Gupta,Adv.
Mr. B. Krishna Prasad,Adv.

For Respondent(s) Mr. Manu Nair,Adv.
Mr. M. Bhatt,Adv.
Mr. Arun Sehgal,Adv.for
M/s Suresh A. Shroff & Co.,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(SUMAN WADHWA)
AR-cum-PS(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3493 OF 2004

Commissioner of Central Excise, Vadodara Appellant(s)

VERSUS

M/s. Alembic Chemcial Works Co.Ltd. Respondent(s)

O R D E R

The respondent assessee is the manufacturer of various medicines and products including the product called 'Strepto Pencillin Injection' which falls under Chapter Heading No. 2941.10 of the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Act'). The assessee had been claiming benefit of excise duty under Notification No.8/95 dated 9.2.95 and on the application thereof the concessional rate of duty @ 10% is payable.

Show cause notices were issued to the respondent alleging that the respondent was not entitled to concessional rate of duty under the aforesaid Notification on the ground that the aforesaid product is combination of streptomycin and penicillin. It was stated in the show cause notices that in order to have the applicability of this Notification both streptomycin and penicillin should be included in the table. The Department took the view that in column no. 1 of the table of the said Notification where

certain bulk products are specified, only streptomycin is mentioned therein and penicillin is conspicuously absent. In the table apart from those goods which are mentioned at serial no.1, serial no.2 deals with formulations and the entry in this behalf reads as under:

"If manufactured from the bulk drugs specified at serial no.1 above".

It is on the aforesaid basis that the Revenue took the stand that the `formulation' should contain those bulk drugs which are specified at serial no.1.

The assessee on the other hand contended that even if one of the bulk drugs mentioned at serial no.1 is included in the formulation that would satisfy the definition of `formulations' contained at serial no.2. In order to support this submission the reference is made to Explanation (ii) to (iv) which defines `formulations' in the following way:

"Formulation" means medicaments processed out of or containing one or more bulk drugs, with or without the use of any pharmaceutical aids (such as diluents, disintegrating agent, moistening agent, lubricant, buffering agent, stabilizer or preserver) which are therapeutically inert and do not interfere with therapeutically or prophylactics activity of the drugs, for internal or external use, or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals, but shall not include any substance to which the provisions of the drugs and Cosmetics Act, 1940 (23 of 1940) do not apply."

On reading the aforesaid definition we find that the plea taken by the respondent/assessee is correct and has to be accepted, and is rightly accepted by the Tribunal. As per the definition taken note of above, even if the formulation is processed out of or containing one bulk product the condition of Notification stands satisfied. We, therefore, do not find any error in the order passed by the Tribunal. This appeal is dismissed accordingly.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 1.4.2015.