

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOs. 4445 OF 2001

Commissioner of Central Excise, Mumbai

Appellant(s)

Versus

M/s. Burroughs Wellcome (I) Ltd.

Respondent(s)

(With office report)

Date: 31/08/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Ashok K. Panda, Sr. Adv.
Mr. Rutwik Panda, Adv.
Mr. Arijit Prasad, Adv.
Mr. B.K. Prasad, Adv.

For Respondent(s)

Mr. S. Ganesh, Sr. Adv.
Mr. U.A. Rana, Adv.
Mr. P.K. Thakur, Adv. for
M/s. Gagrat & Co.

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

The appeal is disposed of in terms of the signed order. No costs.

(J.S. Rawat)

(Kanwal Singh)

AR-cum-PS

Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4445 OF 2001

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Appellant(s)

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M/s. Burroughs Wellcome (I) Ltd.

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O R D E R

This appeal under Section 35-L of the Central Excise Act, 1944

has been filed by the revenue against Final Order No. C-I/60 dated 8th of

January, 2001 passed by the Customs, Excise and Gold (Control) Appellate

Tribunal, West Zonal Bench at Mumbai [for short "the Tribunal"] in

Appeal No. E/1665/00 Mum. whereby the Tribunal has granted exemption

to the assessee under the notification in question.

Heard the counsel appearing for the parties.

Facts giving rise for filing the present appeal in brief are: that the

assessee-respondent imported life saving drugs, namely, 'Polymyxin B-

Sulphate' referable to Item No. 171 of List 2 appended to Exemption

Notification No. 11/97-Cus. dated 1st March, 1997 as amended. Entry 43

of the Exemption Notification reads as follows:

"43 28,29,30 The following goods..

or 38

(A) The life saving drugs Nil Nil
or medicines (including
diagnostic test kits)
specified in List 2

(B) Bulk drugs used in the Nil Nil
manufacture of life saving
drugs or medicines at (A)

above

© Other life saving drugs Nil

Nil

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or medicines"

The assessee had registered itself under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 [for short "the Rules"]. Rule 3 provides for registration of a manufacturer intending to avail of the benefit of an exemption notification.

Rule 4 is the provision for filing an application by the manufacturer to avail of the benefit. Sub-rule (2) of Rule 4 of the Rules reads as under:

"(2) The manufacturer shall also give undertaking on the application that the imported goods shall be used for the intended purpose."

The assessee applied for exemption under clause (B) of Entry 43 seeking exemption from payment of customs duty. Clause (B) talks about the use of the bulk drugs in the manufacture of life saving drugs or medicines at clause (A) of Entry 43. The authority-in-original rejected the application filed by the assessee for grant of exemption, aggrieved against which the assessee filed an appeal before the Commissioner which was also rejected.

Against the order of the Commissioner, the assessee approached the Tribunal and, inter alia, pleaded as follows:

"Throughout the proceedings culminating in the present appeal, the issue considered has been whether Polymyxin B-Sulphate is a bulk drug used in the manufacture of life saving drugs or medicine specified in list-2 of the Exemption Notification. The proceedings have been mis-directed as they have over-looked the factor that the Polymyxin B-Sulphate imported is squarely entitled to exemption under item (A) of Serial No. 43A of the

Notification as it is specified as a life saving drug or medicine in list-2 to the Notification."

The Tribunal applying clause (A) of Entry 43 instead of clause (B)

thereof for the first time granted the benefit to the assessee on the assumption that the Rules do not apply to the goods imported. The Tribunal has not elaborated or discussed the same.

Being aggrieved by the order of the Tribunal granting exemption

to the assessee, the Revenue is in appeal.

It is the stand of the assessee before us that the Rules are not

applicable in view of sub-rule (1A) read with sub-rule (2) of rule 4 of the

Rules. The Tribunal has not discussed this point at all. The order passed

by the Tribunal is rather cryptic and non-speaking. The impugned order is

set aside and the case is remitted back to the Tribunal for a fresh decision in

accordance with law including the question as to whether the assessee could

be allowed to change its claim of exemption from clause (B) to (A) of Entry

43 of the Rules for the first time before it.

The appeal stands disposed of accordingly. No costs.

Parties through their counsel are directed to appear before the

Tribunal on 25th of September, 2006 on which date the Tribunal shall fix a

date of hearing as per its roster.

Registry is directed to transmit the record of this case to the

Tribunal forthwith to enable it to proceed with the matter.

.....J.

.....
(ASHOK BHAN)

New Delhi;
.....J.
August 31, 2006.

.....
(MARKANDEY KATJU)