

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

C.A.No. 4138-41/04

Commnr. of Central Excise, Belapur

APPELLANT

versus

M/s. E.Merck India Ltd. & Anr.

RESPONDENT

(With office report)

WITH
CA Nos. 2623, 3480, 3572, 4202, 5204/06, 614, 1167, 1175, 1170, 1285,1511,
1898,2282,2821/07

(With appln.for stay and with office report)

Date:19/7/2007 This matter was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appearing parties Mr. Mathai M.Paikeday,Sr.Adv.
M/s. Shilpa Singh, Shishir
Pinaki,K.K.Sentilvelan,Shalini
Kumar and B.K.Prasad,Mr.P.Parmeswaran,Advs.

In CA 3480/06 Mr. Rajiv Shakdher,Sr.Adv.
In CA 4202/06 M/s. UA Rana,Abhishek Rao, S.Chakraborty,Nitesh
Jain,Advs.for M/s. Gagrat & Co.

In CA 4138-4141/04 Mr. Joseph Vellapally,Sr.Adv.
M/s. Raghvesh Singh,UA Rana,
Manoj Sanklecha,Nitesh
Jain,Advs.for M/s. Gagrat & Co.

UPON hearing counsel the Court made the following
ORDER

In CA Nos. 4138-41/04

The Appeals are dismissed with no order as to costs.

In Rest of the Civil Appeals

List on 24.7.2007.

(Suman Wadhwa)
Court Master

(Madhu Saxena)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4138-4141 OF 2004

COMMNR. OF CENTRAL EXCISE,
BELAPUR

.. APPELLANT

vs.

ORDER

These appeals preferred by the Department had raised two issues, namely, that concerning classification and extended period of limitation. The product in question was Fixed Dose Combination (FDC) of Vitamin B1, B6 and Vitamin B12. According to the assessee the said product was medicament and therefore it fell under Chapter Heading 3003.10 whereas according to the Department the said product fell under Heading No. 2936.00. According to the Department it is well settled that when an item falls under a specific entry it is not necessary to resort to a general entry. According to the Department the above product came under Heading 2936.00 as the said entry referred to pro-vitamins and vitamins.

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Vide show cause notice dated 2.5.2001 the Department alleged wilful mis-declaration by the assessee and on that basis the Department invoked Sec.11-A of Central Excise Act and claimed duty for the extended period commencing from 1.4.1996 to 28/2/1999.

In our view we are not required to examine in the present civil appeal the issue concerning classification. The reason being that vide a Notification dated 14/10/1999 Ministry of Health and Family Welfare had banned the manufacture, sale and distribution of the said Combination for human use in public interest. Further if the assessee succeeds on the second issue then we need not examine the question of classification in the present case. We keep that question open to be decided in an appropriate matter.

On the second question regarding invocation of extended period of limitation we find that at one point of time several manufacturers like the assessee treated the above Combination as having therapeutic value. In fact the record indicates that the Drug Controller General (India) had issued a letter directing the respondent herein - M/s. E. Merck India Ltd. to claim the above product as classifiable as medicament as it possessed therapeutic value. The claim of the assessee-respondent herein that the above Combination was a medicament was in consonance with the

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directions given by the Drug Controller. In the circumstances Sec. 11-A cannot be invoked. In the above circumstances it cannot be said that there was a wilful mis-declaration on the part of the respondent-assessee.

For the aforesaid reasons we do not find any merit in the civil appeals and the same are accordingly dismissed with no order as to costs.

(S.H. KAPADIA)J.

.....J.
(B.SUDERSHAN REDDY)

NEW DELHI;
JULY 19, 2007.