

C.A.No. 7107 OF 1999

ITEM No.102

Court No.5

SECTION III

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

Civil Appeal No. 7107 of 1999

M/s. Sujanil Chemo Industries

Appellant (s)

VERSUS

Commissioner of Central Excise Customs Pune
(With office report)

Respondent (s)

Date : 10/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE DR. JUSTICE AR. LAKSHMANAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. S.K.Bagaria, Sr.Adv.
Mr. Tarun Gulati, Adv.
Ms. Mrinalini Chandy, Adv.
Ms. Bina Gupta, Adv.
Ms. Divya Roy, Adv.

For Respondent (s)Mr. A.Subba Rao, Adv.
Mr. V.Ramasubramanian, Adv.
Mr. P.Parmeswaran, Adv.
Mr. B.Krishna Prasad, Adv.

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

The Appeal is dismissed in terms of the signed order.

Anita

(Jasbir Singh)
Court Master

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7107 of 1999

M/S. SUJANIL CHEMO INDUSTRIES

...
Appellant (s)

Versus

COMMISSIONER OF CENTRAL EXCISE CUMSOMS, PUNE

...

O R D E R

This Appeal is filed against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), New Delhi dated 20th July, 1999.

The Appellants manufacture a product known as "LICEL". The Appellants claim that their product is classifiable under tariff sub-heading 3808.10 whereas according to the Department the product is classifiable under tariff sub-heading 3003.10.

The Tribunal has held that the product is classifiable under tariff sub-heading 3003.10. The Tribunal has followed an earlier Judgment of the Tribunal in the case of Collector of C.Ex. vs. Pharmasia (P) Ltd. reported in 1990 (47) ELT 658 (Tribunal) wherein, in respect of an almost identical product, namely, Mediker, it has been held that the product would be classifiable under tariff sub-heading 3003.10. It must be mentioned that a Special Leave Petition filed against the earlier Judgment of the Tribunal has already been dismissed by this Court.

It is contended, on the basis of reports of chemical examiners and the Department of Dermatology & Venereology, that the Appellants' product is an insecticide. Reliance is also placed upon various statements of dealers to the effect that in the market the product is considered to be an insecticide. It is submitted that therefore the Department was wrong in classifying the product under tariff sub-heading 3003.10.

Chapter Note 1(c) of Chapter 38 indicates that Chapter 38 would not cover "Medicaments under heading No. 3003 or 3004". Chapter heading 2(i) of Chapter 30 defines "Medicament", inter alia, as a product comprising of two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use. Thus, even though, in normal parlance, a product may be considered to be an insecticide if that product has any therapeutic and prophylactic use then for purposes of classification that product cannot fall under Chapter 38.

In this case it has fairly not been denied that the only use of the product is for killing lice in human hair. We are unable to accept the submission that killing lice does not amount to a therapeutic or prophylactic use. Any medicine or substance which treats disease or is a palliative or curative is therapeutic. Licel cures the infection or infestation of lice in human hair. It is thus therapeutic. It is also prophylactic inasmuch as it prevents disease which will follow from infestation of lice. Thus, this is a product which is used for therapeutic and prophylactic purposes. It would thus be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30. It therefore gets excluded from Chapter 38.

This view has also been taken by us in the case of ICPA Health Products (P) Ltd. vs. Commissioner of C.Ex., Vadodara reported in 2004 (167) ELT 20. We are also in agreement with the opinion expressed by the Tribunal in Pharmasia's case (supra) wherein in respect of an identical product it has been set out that such product would fall under Chapter 30 under tariff heading 30.03.

In this view of the matter, we see no infirmity in the Judgment of the Tribunal. We see no reason to interfere. The Civil Appeal stands dismissed.

.....J.

(S.N.Variava)

.....J.

(Dr.AR.Lakshmanan)

.....J.

(S.H.Kapadia)

New Delhi,
February 10, 2005.

