

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2623 OF 2006

C.C.E., MUMBAI-II

Appellant (s)

VERSUS

M/S.LENEC INSTITUTE OF PHARMA.(P) LTD.

Respondent(s)

WITH

Civil Appeals No. 3480, 3572, 4202 & 5204 of 2006
(With appln. for stay and with office report)

Civil Appeal No.614 of 2007
(With office report)

Civil Appeal No. 1167, 1175, 1170, 1285, 1511, 1898 of 2007
(With appln(s). for stay and office report)

Civil Appeal No.2282 of 2007
(With office report)

Civil Appeal No.2821 of 2007
(With appln. for c/delay in filing appeal and office report)

AND Civil Appeal Nos.4451-4452 fo 2004
(With office report)

Date: 07/08/2007 These Appeals were called on for hearing today.

CORAM :

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

For Appellant(s) Mr. Mathai M. Paikedey, Sr.Adv.
Mr. K.K.Senthilvelan, Adv.
Ms. Shilpa Singh,Adv.
Ms. Shalini Kumar, Adv.
Mr. Shishir Pinaki, Adv.
Mr. P. Parmeswaran,Adv.
Mr. B. Krishna Prasad,Adv.

For Respondent(s)
in CA 3480/06: Mr. Rajiv Shakhder, Sr.Adv.
Mr. U.A. Rana, Adv.
Mr. Abhishek Rao, Adv.
Mr. Nitesh Jain, Adv.
for M/s Gagrat & Co., Advs.

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in CA 4202/06: Mr. U.A. Rana, Adv.
Mr. Abhishek Rao, Adv.
Mr. Nitesh Jain, Adv.
for M/s Gagrat & Co., Advs.

In CAs.2821 &
2282/2007: Mr. Ajay Aggarwal, Adv.
Mr. Ravinder Narain, Adv.

Mr. Rajan Narain, Adv.

For R.No.2 in

CAs.4451-4452/04:

Mr. Nikilesh Ramachandran, Adv.

UPON hearing counsel the Court made the following
ORDER

In C.A.Nos.3480, 5204, 4202 of 2006, 614, 1167, 1175, 1898,
1511, 2282, 2821 of 2007 & 4451-52 of 2004:

Delay condoned in C.A.No.2821/2007.

The Civil Appeals are dismissed with no order as to costs, in
terms of the signed orders.

In C.A.Nos.2623 & 3572 of 2006, 1170 & 1285 of 2007:

The Civil Appeals are de-linked.

(N. Annapurna)
Court Master

(Suman Wadhwa)
Court Master

(Madhu Saxena)
Court Master

(Two signed orders are placed on the file.)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3480 OF 2006

COMMR. OF CENTRAL EXCISE, AURANGABAD

...Appellant(s)

Versus

M/S. GLAXO SMITHKLINE PHARMA LTD. & ORS. ...Respondent(s)

WITH

CIVIL APPEALS NOS.5204/2006, 4202/2006, 614/2007, 1167/2007,
1175/2007, 1898/2007, 1511/2007 & 4451-52/2004

ORDER

In view of our Order in Commissioner of Central Excise, Belapur
vs. M/s. E. Merck India Ltd. & Anr. (C.A.Nos.4138-4141/2004), decided
on 19th July, 2007, the Civil Appeals are dismissed with no order as to
costs.

.....J.
(S.H. KAPADIA)

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

New Delhi,
August 07, 2007.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2821 OF 2007

Commissioner of Central Excise, Mumbai-II .. Appellant

versus

M/s Capsulation Services Ltd. ... Respondent

with Civil Appeal No. 2282 of 2007

ORDER

The issue involved in these two civil appeals concerns classification of medicaments i.e. Beta carotene with Vitamin C, E and Minerals (Selace capsules), Seven Seas Vitamin A & D capsules (Ostebon 400 Mg Capsules, Vitamin A & D capsules. Trade name Aroin capsules, (Megasift-E) Omega-3 Fatty acids with vitamin E capsules, FRS Vitamins and Mineral capsules, Evt. 400 Mf. capsules, power plus capsules (Multivitamine and Mineral capsules). The assessee claimed these goods to be classifiable under sub-heading 3003.10 P or P Medicaments attracted duty @ 15% whereas the Department classified these product as vitamins under Tariff sub-heading 2936.00 attracted duty @ 18% during the relevant period.

To answer the above issue, we quote hereinbelow Sub-heading No. 3003.10 (Medicaments) which attracted duty @ 15% as also Tariff Sub-heading ("TSH") No. 2936.00 which attracted duty @ 18%, during the relevant period.

"3003.10 - Patent or proprietary medicaments, other than 15% those medicaments which are exclusively Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic."

"2936.00 Provitamins and vitamins, natural or 18% reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent."

According to the Department, it is well settled rule of interpretation that when the subject-item falls within the specific entry then general or residuary entry cannot be invoked. Therefore, the limited question which we are required to decide is whether the above Items were classifiable under TSH 2936.00 or whether they were classifiable as medicaments under TSH 3003.10.

At the outset, we may point out that TSH 2936.00 refers to vitamins and provitamins. TSH 2936.00 comes under Chapter 29 which deals with Organic Chemicals. On the other hand, TSH 3003.10 comes under Chapter 30 which deals with Pharmaceutical Products. Under Chapter Note No. 2 'Medicaments' are defined to mean goods other than beverages/ foods not falling within Tariff heading No. 30.02 or 30.04 which are either products consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses or unmixed products suitable for use in measured doses. Basically, provitamins and vitamins are organic chemicals under Chapter 29 whereas provitamins plus active ingredients as prescribed in the British or Indian Pharmacopeia could fall under Chapter 30 (Pharmaceutical Products).

At this stage, we may also state that under the HSN, medicaments have been expressly excluded from the purview of Tariff heading 29.36.

All these aspects including the claim of the assessee that the above Items do have therapeutic or prophylactic value and that they fall in the category of medicaments were brought to the notice of the Adjudicating Authority. However, the said Authority has not properly examined any of the above issues. In the circumstances, there is no merit in the above civil appeals and the same are accordingly dismissed with no order as to costs.

.....J.
(S. H. Kapadia)

.....J.
(B. Sudershan Reddy)

New Delhi;
August 7, 2007.