

## **Warner Hindustan Ltd. vs Collector Of Central Excise, Hyderabad on 3 August, 1999**

**Equivalent citations: 1999(66)ECC592, 1999(113)ELT24(SC), (1999)6SCC762**

**Bench: S.P. Bharucha, N. Santosh Hegde**

ORDER

S.P. Bharucha and N. Santosh Hegde, JJ.

1. Not much needs to be stated to allow this appeal.

2. The appellant manufactures what it calls "Halls Ice Mint tablets". It classified these tablets as "Ayurvedic medicines" under Heading 3003.30 of the Central Excise Tariff. It was issued a notice to show cause why these tablets should not be classified under Tariff Heading 3003.19 as "patent or proprietary medicines". The Assistant Collector, after hearing the appellant, held that the tablets were patent or proprietary medicines classifiable under Heading 3003.19. In appeal by the appellant, the Collector of Central Excise (Appeals) held that the tablets were Ayurvedic medicines classifiable under Heading 3003.30. The Excise authorities went in appeal to the Tribunal and, for the first time, took the stand that the tablets were correctly classifiable under Heading 17.04 as "confectionery". The appellant, of course, stuck to its stand that the tablets were Ayurvedic medicines classifiable under Heading 3003.30. The Tribunal noted that the Assistant Collector had classified the tablets under Heading 3003.19, that is, as patent or proprietary medicines. This was clear indication that the stand of the Excise authorities prior to the stage of the appeal to the Tribunal was that the tablets were patent or proprietary medicines classifiable under Heading 3003.19. The Tribunal also noted that "both sides have not adduced any detailed arguments as to why these tablets can be considered as confectionery item or otherwise although a plea is there from the Collector in the grounds of appeal that the goods are assessable under Tariff 17.04". In our opinion, the Tribunal was quite wrong in these circumstances in allowing the appeal of the Excise authorities and classifying the mint tablets as items of confectionery under Heading 17.04. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Excise authorities making it clear that it was open to the Excise authorities to issue a fresh show cause notice to the appellant on the basis that the tablets were classifiable under Heading 17.04 as items of confectionery. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below.

3. In the result, the appeal is allowed. The judgment and order of the Tribunal under appeal is set aside and the appeal filed by the Excise authorities before the Tribunal is dismissed. It shall be open to the Excise authorities to issue to the appellant a notice to show cause why the tablets should not be classified as items of confectionery under Heading 17.04, provided it is open to the Excise

authorities to do so in law.

4. No order as to costs.