

STATE OF GUJARAT

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v.

CADILA HEALTHCARE LTD.

(Civil Appeal No.7322 of 2021)

JULY 11, 2022

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[M. R. SHAH AND SANJIV KHANNA, JJ.]

Gujarat Sales Tax Act, 1969: Entry 25 of Schedule I, Entry 26(1) of Schedule II Part A – Product “KADIPROL” sold by the assessee – Classification as, Poultry Feed under Entry 25 of Schedule I or as a Drug and Medicine under Entry 26(1) of Schedule II Part A – Assessee classified the product as poultry feed whereas the Department held that it should be classified as drug and medicine – Order passed by the High Court that Kadiprol would be classified as poultry feed – On appeal, held: In the judgment passed by the High Court there was no detailed and in-depth examination of the facts – Though the matter would have been remitted to the High Court for decision afresh but since the issue is in the academic interest and there is no revenue implication, present proceedings closed keeping the larger question on the Common Parlance Test open, to be considered in an appropriate case.

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Disposing of the appeal, the Court

HELD: 1.1 It is noticed that the product in question KADIPROL was sold in a sachet/packet of 100 gm. It was not meant to be given as a food to the poultry. It was required to be mixed with the feed given to the poultry/birds. It cannot be directly fed and/or given to the birds. Therefore, there is some merit in the submission of the Revenue that the impugned judgment and order does not deal with the reasoning given by the tribunal. Therefore, usually in the said background, the matter would have been remitted to the High Court for a fresh decision. However, there is no inclination to pass an order of this nature as it is accepted that the issue in question is of academic interest and even if the appeal is decided in favour of the Revenue, it would not have any revenue implication as there are no tax dues. In view of the above facts, the present proceedings are closed keeping the larger question on the Common Parlance Test open,

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A to be considered in an appropriate case in a like matter. [Para 7, 8][828-F-H; 829-A-B]

B *State of Gujarat v. M/s. Pfizer (India) Ltd.; Glaxo Laboratories (India) Ltd. v. State of Gujarat* (1979) 43 STC 386 (Guj); *Eskayef Limited v. Collector of Central Excise* (1990) 4 SCC 680 : [1990] 1 Suppl. SCR 442; *Glindia Ltd. v. Union of India* 1989 (22) ECC 311; *State of Gujarat v. Pfizer Ltd.* (1991) 82 STC 374 (Guj); *Sun Export Corporation v. Collector of Customs, Bombay* (1997) 6 SCC 564 : [1997] 1 Suppl. SCR 434; *M/s. Golden Streak Drug & Pharmaceuticals Ltd., Lucknow* v. *Commissioner Trade Tax Lucknow* 2017-TIOL-2502-HC-ALL-CT; *Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co.* (1989) 1 SCC 150 : [1988] 3 Suppl. SCR 12; *Plasmac Machine Manufacturing Company Private Limited v. Collector of Central Excise, Bombay* (1992) 84 STC 107 (SC) : [1990] 3 Suppl. SCR 384; *Commissioner of Customs (Import) Mumbai v. Dilip Kumar and Company and Ors.* (2018) 9 SCC 1 : [2018] 7 SCR 1191 – referred to.

Case Law Reference

E	[1990] 1 Suppl. SCR 442	referred to	Para 4.7
	[1997] 1 Suppl. SCR 434	referred to	Para 5.4, 5.8
	[1988] 3 Suppl. SCR 12	referred to	Para 5.6
	[1990] 3 Suppl. SCR 384	referred to	Para 5.6
F	[2018] 7 SCR 1191	referred to	Para 5.8

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7322 of 2021.

G From the Judgment and Order dated 05.07.2016 of the High Court of Gujarat at Ahmedabad in Sales Tax Reference No.4 of 2005.

Ms. Aastha Mehta, Ms. Deepanwita Priyanka, Advs. for the Appellant.

Ms. Kavita Jha, Shammi Kapoor, Ms. Swati Agarwal, Udit Naresh, Advs. for the Respondent.

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The Judgment of the Court was delivered by

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M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.07.2016 passed by the High Court of Gujarat, at Ahmedabad in STR No.4 of 2005 by which the High Court has answered the reference in favour of the respondent – assessee – dealer holding that the product “KADIPROL” sold by the respondent can be categorized as “Poultry Feed” falling under Entry 25 of Schedule I of the Gujarat Sales Tax Act (hereinafter referred to as “GST Act”) and not as a “Drug and Medicine” under Entry 26(1) of Schedule II Part A of the GST Act, the State of Gujarat has preferred the present Appeal.

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2. At the outset it is required to be noted that the present proceeding arise out of the Determination Order passed by the Deputy Commissioner of Sales Tax under Section 62 of the GST Act by which the Deputy Commissioner held that the product in question – KADIPROL would be covered as “Drug and Medicine” under Entry 26(1) of Schedule II Part A of the GST Act.

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2.1 The respondent filed an application before the Deputy Commissioner of Sales Tax under Section 62 of the GST Act to determine the rate of tax on “KADIPROL” sold under their invoice dated 20.03.1989. The respondent also preferred an application before the Assistant Commissioner, Food and Drugs Control Administration regarding whether the respondent is required to obtain a license under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as “Act, 1940”) for manufacturing the product “KADIPROL”. That, the Authority under the Act, 1940 informed the respondent that the license for manufacturing of product “KADIPROL” under the Act, 1940 was not required. However, the Deputy Commissioner of Sales Tax, by his order dated 16.04.1990 held that the product in question contains some preventive medicine and therefore, categorized as “Drug and Medicine” as per Entry 26(1) of Schedule II Part A of the GST Act. The Tribunal upheld the order of the Deputy Commissioner. The respondent preferred a Reference Application under Section 69 of the GST Act before the Tribunal for referring the matter for decision of the High Court. The reference

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A was made to the High Court which was numbered as Sales Tax Reference No.4 of 2005.

2.2 By impugned judgment and order, the High Court has answered the reference in favour of the respondent – assessee and has held that the product “KADIPROL” would be covered as “Poultry Feed” under Entry 25 of Schedule I of the GST Act.

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2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court holding that the product “KADIPROL” manufactured by the respondent would be covered by Entry 25 of Schedule I of the GST Act as “Poultry Feed”, the State of Gujarat has preferred the present Appeal.

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3. Ms. Aastha Mehta, learned Counsel has appeared on behalf of the appellant – State of Gujarat and Ms. Kavita Jha, learned Counsel has appeared on behalf of the respondent – assessee.

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4. Ms. Aastha Mehta, learned Counsel appearing on behalf of the appellant – State of Gujarat has submitted that in the facts and circumstances of the case, the High Court has committed grave error in overturning the findings given by the Tribunal and the Deputy Sales Tax Commissioner holding that the product “KADIPROL” can be categorized as “Drug and Medicine”.

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4.1 It is submitted that the High Court has not given any reason whatsoever to overturn the findings given by the Tribunal as well as the Deputy Sales Tax Commissioner. It is submitted that both the authorities below in fact considered the expert literature on the subject which ought not to have been brushed aside by the High Court without giving any independent reasoning.

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4.2 It is submitted that the composition of “KADIPROL” for every 100 gm was (a) Emporium (Amprolium) Hydrochloride – 25 gm and (b) Vitamin K3 – 250 gm.

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4.3 It is submitted that the same product was used to provide protection against coccidiosis due to anti-coccidial property of emporium. It is submitted that the presence of Vitamin K in “KADIPROL” prevents loss of blood by ensuring

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adequate availability of prothrombin and thus supplements the anti-coccidial action for emporium. It is submitted that product also eliminates subclinical coccidian infection and improves the health of the blood. It is submitted that therefore the predominant purpose for which the product in question was used by persons rearing poultry is to eliminate subclinical coccidian infection. It is submitted that the indirect effect of the said drug is only consequential and may be to improve the health of the poultry or help in growth of poultry. It is submitted that however that does not dilute the main purpose of the ingredients, the composition as well as the purpose for which it was administered. It is submitted that therefore the product would fall under Entry 26(1) of Schedule II Part A of the GST Act as “Drug and Medicine”.

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- 4.4 It is further submitted on behalf of the State that a drug can be administered either for prevention or treatment of disease. The Deputy Sales Tax Commissioner considering the expert literature specifically held that the drug is to ensure that an infectious disease does not spread and was administered to the poultry feed as a “preventive measure”. It is submitted that if the nutrition is not for predominant purpose, then the product cannot be ‘poultry feed’.

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- 4.5 It is submitted that the Tribunal considered the decision of the High Court in the case of State of Gujarat vs. M/s. Pfizer (India) Ltd. in Sales Tax Reference No.38 of 1980 in which the High Court held that if main purpose is medicinal and not nutrition, then even if there is some indirect help in increasing production of eggs, the product would not be called “poultry feed”. It is submitted that in the present case the Tribunal specifically held that the product is a “non-nutritional additive” which as per the existing literature falls within the category of “Drug”. It is submitted that even in the case of M/s. Pfizer (India) Ltd. (Supra), one of the products which had Terramycin and was used for the purpose of preventing or treating diseases was held to be a “drug”. It is submitted that in the case of M/s. Pfizer Ltd. (Supra), it was specifically held that the product which does

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- A not have any nutritional value as predominant use cannot be a poultry feed. It is submitted that while deciding the reference in the case of M/s. Pfizer (India) Ltd. (Supra), the High Court also considered its earlier decision in the case of **Glaxo Laboratories (India) Ltd. vs. State of Gujarat [(1979) 43 STC 386 (Guj)]**. It is submitted that
- B neither Pfizer judgment nor Glaxo judgment of the High Court have held that non-nutritional additives would be considered as “poultry feed”.
- 4.6 It is submitted that the view taken by the High Court relying on the decision in case of M/s. Pfizer (India) Ltd. (Supra)
- C has widened the ambit of “poultry feed” so as to restrict the meaning of Entry “Drug and Medicine”. It is submitted that no Entry under the Schedule can be interpreted so broadly so as to include even products which have medicinal properties. It is submitted that since the product is sought to be exempted under Entry 25, the meaning given to
- D “poultry feed” cannot be widened and has to be construed strictly. It is submitted that such an interpretation gives undue and subjective power on dealers to use any product as “poultry feed” thereby getting exemption of tax.
- E 4.7 It is submitted that in the case of **Eskayef Limited vs. Collector of Central Excise [(1990 4 SCC 680)]**, it is held by this Hon’ble Court that the products “Neftin-50 and Neftin-200” which are used for prevention and treatment of ailments such as “coccidiosis” and “histomoniasis” in poultry cannot be considered as ‘poultry feed’ and ought to be categorized as a “drug”. It is submitted that in the said decision it is specifically held that merely because these products can be used for improving egg production and increase in growth rate of broilers would not in any way detract from the fact that said products are medicine. It is submitted that in the present case also, “KADIPROL” is
- F used for the purpose of prevention and treatment, with an indirect positive consequence for the health of the poultry.
- G 4.8 Making above submissions and relying upon above decisions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High
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Court and restore the decisions of the Sales Tax Tribunal as well as the Deputy Sales Commissioner and to hold that the product “KADIPROL” can be categorized as “Drug and Medicine” under Entry 26(1) of Schedule II Part A of the GST Act and not as “poultry feed” falling under Entry 25 of Schedule I of the GST Act.

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5. Present appeal is vehemently opposed by Ms. Kavita Jha, learned Counsel appearing for the respondent.

5.1 Ms. Jha, learned Counsel appearing for the respondent – dealer – assessee has submitted that as such as on date there is no existing demand on the respondent pertaining to the issue and even all the assessments under the GST Act are also closed with respect to the respondent. It is submitted that therefore as such the issue involved in the present appeal would be academic.

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5.2 Making submissions on merits, learned Counsel appearing for the respondent has vehemently submitted that in the facts and circumstances of the case, the High Court has not committed any error in categorizing the product “KADIPROL” as “poultry feed” under Entry 25 of Schedule I of the GST Act. It is submitted that while holding so the High Court has taken into consideration the fact that over a period of time concept of “poultry feed” has changed considerably.

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5.3 It is submitted that the words “poultry feed” has acquired definite connotation in livestock farming and so also has the concentrates and whereas the feed simpliciter is essential for the maintenance of poultry, the concentrates i.e. vitamins in the food stuff enable the poultry to maintain energy; to perform the vital process of life and provide the material to replace the essential tissues; breakdown of which occurs in the body continuously. It is submitted that the ration of poultry may be divided for convenience into two parts: (1) maintenance ration, viz. the portion of the feed which just enables the poultry at rest to carry on the essential processes of life, such as breathing and circulation of blood, without either gain or loss of weight; and (2) feed supplied

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- A over and above the maintenance requirement for augmenting the production for growth or fattening; or for augmenting egg laying capacity.
- 5.4 It is submitted that in the present days when the maintenance of the poultry has become so costly, the poultry is not kept in a farm in a state of non-production. It is submitted that to make the poultry financially viable, it is but necessary to supply a balanced poultry feed to increase the production of eggs or fat and growth if the poultry is kept for consumption of its meat. It is submitted that over a period of time, when the concept of poultry feed has changed considerably, it does not mean food for poultry in conventional sense. It consists not only of concentrates but even additives, like vitamins, minerals and antibodies which are essential for better development of poultry etc. which is purpose of having a good yield from such activities. In support of above submissions, reliance is placed on the following decisions.
- D (1) Glaxo Laboratories (India) Limited vs. State of Gujarat (1979) 43 STC 386 (Guj)
- E (2) Glindia Ltd. vs. Union of India 1989 (22) ECC 311
- (3) State of Gujarat vs. Pfizer Ltd. (1991) 82 STC 374 (Guj)
- F (4) Sun Export Corporation vs. Collector of Customs, Bombay (1997) 6 SCC 564
- (5) M/s. Golden Streak Drug & Pharmaceuticals Ltd., Lucknow vs. Commissioner Trade Tax Lucknow 2017-TIOL-2502-HC-ALL-CT
- G 5.5 It is submitted that the product “KADIPROL” is added to “poultry feed” so as to make good deficiency of Vitamin K. The product “KADIPROL” is aimed at preventing loss of blood in the intestine by enhancing clotting time of blood in birds. It is submitted that the said product is an essential poultry feed supplement and is liable to be classified as
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“poultry feed” under Entry 25 of Schedule I of the GST Act. A

- 5.6 It is further submitted by Ms. Jha, learned Counsel appearing for the respondent that this Court has consistently taken the view that in determining the meaning of an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. It is submitted that therefore while considering a particular product / article, a common parlance test is to be applied. In support of above submissions, reliance is placed on the decisions of this Court in the case of **Collector of Central Excise, Kanpur vs. Krishna Carbon Paper Co. [(1989) 1 SCC 150]** and **Plasmac Machine Manufacturing Company Private Limited vs. Collector of Central Excise, Bombay [(1992) 84 STC 107 (SC) : [1990] Supp 3 SCR 384]**. C D
- 5.7 It is submitted that in the present case, poultry rearing industry, poultry feed concentrates like “KADIPROL” are not bought as “Drug and Medicine”, but infact the same is bought as “poultry feed”. It is submitted that even the respondent is marketing its product “KADIPROL” as “not for medicinal use”. It is submitted that therefore applying common parlance test also, the product “KADIPROL” is to be considered as “poultry feed”. E
- 5.8 It is submitted that the subsequent decision of this Court in the case of **Commissioner of Customs (Import) Mumbai vs. Dilip Kumar and Company and Ors. [(2018) 9 SCC 1]** by which this Court overruled the decision of this Court in the case of **Sun Export Corporation vs. Collector of Customs, Bombay [(1997) 6 SCC 564]** to the extent wherein Sun Export Case held that in case of ambiguity, benefit of exemption notification should go to the assessee, shall not be applicable to the facts of the case on hand. It is submitted that in the present case, it is not the case of respondent that the product “KADIPROL” was covered within the ambit of any exemption notification and therefore, in case of ambiguity, the benefit should go to the F G H

A respondent. It is submitted that present case pertains to the classification of the product “KADIPROL” which is poultry feed supplement as to whether the same is classifiable as “poultry feed” or as “Drug and Medicine”.

5.9 B It is further submitted by Ms. Jha, learned Counsel appearing for the respondent that even under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as “Gujarat VAT Act”), sale and purchase of “poultry feed” are exempt from tax under Entry 48 Schedule I of the Gujarat VAT Act. It is submitted that even under the Gujarat VAT Act, food and dietary supplements are specifically excluded within the ambit of Drug and Medicine. It is submitted that thus, the same reflects intention of the legislature that entry “Drug and Medicine” will not imbibe food and dietary supplements within its ambit. It is submitted that by drawing an analogy in the present case as well, it can be argued that even “poultry feed” supplements like “KADIPROL” will not be covered within the ambit of “Drug and Medicine” under Entry 26(1) of Schedule II of the GST Act.

Making above submissions, it is prayed to dismiss the present appeal.

E 6. Heard learned Counsel appearing for the respective parties at length.

7. Having heard the learned counsel appearing on behalf of the respective parties and having perused the order passed by the learned Tribunal as well as the impugned judgment and order passed by the High Court, it is noticed that the product in question was sold in a sachet/ packet of 100 gm. It was not meant to be given as a food to the poultry. It was required to be mixed with the feed given to the poultry/birds. It cannot be directly fed and/or given to the birds. Therefore, there is some merit in the contention of the Revenue that the impugned judgment and order does not deal with the reasoning given by the Tribunal. It merely quotes and relies upon the two decisions in the case of **Glaxo Laboratories (India) Ltd. (supra)** and **M/s. Pfizer (India) Ltd. (Supra)** without a detailed and an in-depth examination of the facts as found. Therefore, usually in the aforesaid background, we would have remitted the matter to the High Court for a fresh decision. However, we

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are not inclined to pass an order of this nature as it is accepted that the issue in question is of academic interest and even if we decide the appeal in favour of the Revenue, it would not have any revenue implication as there are no tax dues. A

8. In view of the above facts and as the issue in question is in the academic interest and as there is no revenue implication as there are no tax dues and therefore there is zero tax effect, we close the present proceedings keeping the larger question on the Common Parlance Test open, to be considered in an appropriate case in a like matter. B

With this, the present appeal stands disposed of.

Nidhi Jain

Appeal disposed of.