

Shree Baidyanath Ayurved Bhavan Ltd. vs Collector Of Central Excise, Nagpur on 30 March, 1995

Equivalent citations: AIR 1996 SC 2829 A, 2002(82) ECC 460, 1996(83)ELT492(SC), (1996)9SCC402, AIR ONLINE 1995 SC 783

Bench: A.M. Ahmadi, S.P. Bharucha, K.S. Paripoornan

ORDER

1. Civil Appeal Nos. 4658/85, 4659-60/85 : In these three appeals the short question arising for consideration is whether Dant Manjan Lai manufactured by the appellant-Company falls within the meaning of an Ayurvedic Medicine to qualify for exemption from payment of excise duty under Notification No. 62/78-C.E., dated 1st March, 1978 issued in exercise of power conferred by Rule 8(1) of the Central Excise Rules, 1944. The relevant entry introduced by amendment reads as "all drugs, medicines, pharmaceuticals and drug intermediates not elsewhere specified". The appellant contends that the product in question is a scientific medicine which would attract the aforesaid entry and would, therefore, be exempt from the payment of excise duty. The Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, by a detailed order came to the conclusion that in common parlance the product in question could not be described as a medicinal preparation and that it could rightly be described as a toilet preparation. In that view of the matter the Tribunal rejected the claim of the appellant for exemption from payment of excise duty under the aforementioned Notification. It is this view of the Tribunal which has been assailed before us in these appeals.

2. The ingredients for the product in question are stated to be Geru (red earth) to the extent of 70% which is stated to have a cooling quality but the Tribunal noticed that it is largely used as a filler or colouring agent and is not described as a medicine in common parlance. After going through the various texts, the definition of 'drug' under the Drugs & Cosmetics Act, 1940 and Ayurvedic Books as well as opinion of Experts in this behalf, the Tribunal ultimately came to the conclusion that the product in question could not be described as a medicinal preparation and accordingly rejected the claim of the appellant.

3. We have heard the learned Counsel at some length. He also invited our attention to the provisions of the Drugs & Cosmetics Act, 1940, the opinion of the Experts, the statements of a few consumers as well as the description given in certain Ayurvedic Books and contended that the preparation would fall within the relevant entry in the exemption notification. The Tribunal rightly points out that in interpreting statutes like the Excise Act the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say, the meaning attached to them by those using the product. It is for this reason that the Tribunal came to the conclusion that scientific and technical meanings would not advance the case of the appellants if the same runs counter to how the product is understood in popular parlance. That is why the Tribunal observed in Paragraph 86 of the judgment as under :

So certificates and affidavits given by the Vaidyas do not advance the case of Shri Baidyanath Ayurved Bhawan Limited in the absence of any evidence on record to show and prove that the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a toilet requisite.

It is this line of reasoning with which we are in agreement. The Tribunal rejected the claim of the appellant holding that ordinarily a medicine is prescribed by a Medical Practitioner and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes. We are, therefore, of the opinion that the Tribunal applied the correct principles in concluding that the product in question was not a medicinal preparation ('Ayurvedic') and, therefore, the appellant was not entitled to the benefit of the exemption notification. Having heard the learned Counsel at length and having perused the line of reasoning adopted by the Tribunal with which we are in general agreement, we see no reason to interfere with the conclusion reached by the Tribunal and, therefore, we dismiss these appeals, but make no order as to costs.

4. SLP (C) No. 5520/86 and WP(C) No. 803/86 : For the reasons stated in Civil Appeal Nos. 4658-60/85, both these petitions are dismissed.
5. Civil Appeal No. 2199/91 : The learned Counsel for the appellant states that in view of the instructions issued by the Central Board of Excise & Customs dated 25th September, 1991 (C.No. 11/91 CX-2) he does not desire to proceed with this appeal
6. The appeal will, therefore, stand disposed of for want of prosecution with no order as to costs.