

Collector of Central Excise Guntur

Vs

Andhra Sugar Ltd., Venkataraypurama

Civil Appeals Nos. 1568-69 (NM) of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

26.10.1988

JUDGMENT

SABYASACHI MUKHARJI, J.-

1. These are appeals under Section 35-L (b) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'), arising out of the order of the Tribunal, dated November 26, 1987. The issue involved in the present case is whether the Acetic Anhydride manufactured by the respondent and sold to drug manufacturers i. e. M/s. IDPL is eligible to benefit of exemption under the notification No. 55/75 CE dated March 1, 1975 as amended by the Notification No. 62/78 CE dated March 1, 1978 as drug intermediate.
2. The respondent manufactured Acetic Anhydride falling under Tariff Item 68 of the Central Excise Tariff. It had filed refund claims for Rs. 1,57,442.08 and Rs. 1,14,587.74 being the duty paid on Acetic Anhydride during the period from February 26, 1982 contending that these goods were exempt from the payment of duty of excise leviable thereon under the notification referred to hereinbefore. It was contended that Acetic Anhydride is a drug intermediate and all such clearance for which the refund was claimed, had been made for delivery to the drug manufacturer. If drug intermediate is sold or supplied to a drug manufacturer then under the notification duty was not payable. The question, therefore, is was the item manufactured by the petitioner, during the relevant period, a drug or an intermediate in terms of the notification.
3. It appears that the Assistant Collector of Central Excise by his adjudication had allowed the refund of Rs. 32,261.74 and Rs. 87,932.40 out of the aforesaid claim of the respondent under Section 11-B (2) of the Act. The aforesaid orders of the Assistant Collector were challenged by the department by preferring appeals before the Collector of Central Excise (Appeals), Madras. The Collector (Appeals) allowed the appeal filed on behalf of the revenue and annulled the order of the Assistant Collector, Eluru, sanctioning sums of Rs. 35,261.74 and Rs. 87,943.40 respectively and directed that those amounts be returned to the department. Being aggrieved thereby, the respondent preferred appeals before the Appellate Tribunal and the same were allowed. Hence, these appeals.
4. The question was considered in a decision of the learned Single Judge of the High Court of Karnataka in Mysore Acetate & Chemical co. Ltd. v. Assistant Collector, Central Excise, Mysore, wherein it was held that Acetic Anhydride is a chemical but when it is supplied as a drug intermediate to a drug manufacturer, it would be entitled to exemption under the relevant notification. The requirement of end-use, though not built into the exemption notification, is not only implied but also becomes imperative in a situation where the product has uses other than as drug intermediate whereas the exemption is limited only to drug intermediate, i. e., only when the

product is used as drug intermediate. In this connection reliance was placed on decision of the Government of India in Hindustan Organic Chemicals Ltd., where reversing the order of the Excise Authorities of Bombay, the government by its order dated September 14, 1981 narrated as follows :

Government have considered all the written and oral submissions. Government find considerable force in the contention that the view taken by the lower authorities tends to defeat the object of the exemption notification. The interpretation on the scope of the term 'Drug Intermediate' put by the lower authorities is not warranted on a plain reading of the notification. Government observe that the notification does not specify the state of use of the item claimed as drug intermediate as the penultimate state i. e., immediately prior to the obtaining of the drug in the process of its manufacture. The petitioners have produced enough evidence to show that the three items are used in the manufacture of drugs. The petitioners have enclosed copies of the certificates issued by the National Chemical Laboratory, Pune and the Central Drug Research Institute, Lucknow, certifying that Aniline, Para Nitro Chloro Benzene and Acetenilide find wide application as intermediate for drug among other things. The National Chemical Laboratory, Pune have certified that the abovementioned chemicals are drug intermediates to the extent they are used in the manufacture of drugs. Government accordingly set aside the order in appeal and held that the petitioners should get the benefit of the exemption notification for the three items to the extent that they are actually used in the manufacture of drugs. In the government's view, this requirement of end-use though not built into the exemption notification is not only implied but also becomes imperative in a situation where the produce has uses other than as drug intermediate whereas the exemption is limited only to drug intermediate that is only when the product is used as a drug intermediate.

5. It appears that the same principle was reiterated in the case of In re Shusan Chemicals (Madras) Pvt. Ltd. It is well settled that the meaning ascribed by the authority issuing the notification, is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in K. P. Varghese v. ITO. It is a well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment.

6. Keeping in view the language used in the exemption notification and the purpose of the notification, the expression 'drug intermediate' is of wide description and substance; and must be so interpreted. Indeed, it was found in the facts of this case that the Acetic Anhydride manufactured by the appellants has been used by M/s. IDPL in the manufacture of drugs.

7. In the light of the purpose for which the goods in question were used, we are of the opinion in the context the Tribunal came to a correct conclusion. In the premises, the appeals must fail and are accordingly dismissed. There will, however, be no order as to costs.

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