

SUPREME COURT OF INDIA

Cosmetics

Vs.

Commissioner of Central Excise

(S. R. Babu and G.P. Mathur JJ.)

12.11.2003

ORDER

1. The question raised before us is whether 'Acquadermis', a preparation made by the appellant falls under Entry 3401.10 (Soap in any form) or Entry 3307.90. The relevant Entries are reproduced hereunder:

"3401.10 : Soap in any form.

33.07 : Pre-shave, shaving or after shave preparations (not containing substances specified in Note 1(c) to this Chapter, personal deodorants, bath, preparations, depilatories and other perfumery, cosmetics or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties.

3307.90 : Other"

2. The assessing authority, the Appellate authority and the Tribunal on further appeal took the view that the said Acquadermis falls under Entry 3307.90. The claim made before us by the appellant is that the said product is only a soap in the liquid form and does not answer the description coming under Entry 33.07 or 3307.90 and it falls only under Entry 3401.10 (Soap in any form).

3. Two certificates are issued one by the Deputy Chief Chemist and another by the Senior Drugs Inspector, Government Analyst (Drugs) as to the nature of product in question. It is contended only the report of the Deputy Chief Chemist has been considered which apart from analysing the product as such has taken note of other aspects such as aggressive sales promotional information supplied by the appellant. Further the report sent by the Government Analyst (Drugs) has not been taken note of at all. The Tribunal has not examined the nature of product to conclude as to under which entry it falls. Nor, the other authorities have examined the matter in proper perspective. Therefore, we set aside the order made by the Tribunal and by the other authorities and remit the matter to the Collector of Central Excise for fresh consideration.

4. In respect of other question of abatement, the Tribunal has itself remanded the matter, therefore, this is an additional factor for us to remand the matter.

5. The appeal is partly allowed accordingly.