

SUPREME COURT OF INDIA

Meghdoot Gramodyog Sewa Sansthan

Vs.

Commissioner of Central Excise, Lucknow

C.A.No.7445 of 2003

(Mrs.Ruma Pal and Arun Kumar JJ.)

08.10.2004

JUDGMENT

Ruma Pal, J.

1. The question has arisen whether the following six items should be classified under the Central Excise Tariff Act, 1985 as medicaments under Heading 3003.30 or under Heading 3305.10 and 3305.50 of which deal with perfumed hair oil and other preparations for use on the hair. The six items are:

- (1) Bhringraj Tail
- (2) Trifolia Brahmi tail
- (3) Neem Herbal Sat
- (4) Sat Reetha
- (5) Meghdoot Herbal Sat
- (6) Meghdoot Herbal Powder.

2. The Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) was of the view that the products were properly classifiable under Tariff Heading 3305.10 and 3305.50. The appellant has challenged the finding of the Tribunal and contended that each of these six products referred to above were classifiable under Heading 3003.30.

3. The two competing headings reads as follows:

30.03 - Medicaments (including veterinary medicaments)

3303.30 - Medicaments, including those used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems.

33.05 - Preparations for use on the hair

3305.10 - Perfumed hair oils

3305.50 – Other

4. In coming to the conclusion that all the six products were classifiable under preparation for use on the hair, the Tribunal held that except for certain letters from doctors, the appellants had not produced any evidence to show that the products were prescribed by Medical Practitioners as medicines for various diseases. The second basis of the Tribunal's conclusion was that there was nothing to show that patients were kept under observations, or that the results said to have been achieved by the use of the products were obtained by keeping the patients in hospitals over a period of time. Thirdly, it was held that the Commissioner had found that the packing of the products would indicate that the products were cosmetics and not medicines or drugs since it depicted 'a lady with black flowing hair' and other similar images.

5. The decision of the Tribunal is unsustainable on the reasoning given. A product may be medicinal without having been prescribed by a Medical Practitioner. It was also not necessary for a person manufacturing medical products to claim classification under Tariff Heading 3303.03 without establishing that the product had in fact been tested on patients in controlled situations or that the outcome had not been tested for effectiveness. This would be particularly true in the cases where the products are claimed to be based on traditional ayurvedic formulae.

6. The appellant has drawn our attention to the composition of the six products and the uses in respect of each of these six products. This has not been doubted by the Tribunal nor indeed by the Departmental authority. The composition and the curative proper-ties being admitted, it was not open either to the Department or the Tribunal to hold that the items were cosmetics merely by reason of the outward packing.

7. This Court has in similar matters come to the conclusion that items which may be sold under names bearing a "cosmetic" connotation would nevertheless remain medicines based on the composition of the items in *B.P.L. Pharmaceuticals Ltd. v. Collector of Central Excise, Vadodara*.

8. As far as the first three items listed earlier are concerned, this Court has in *Commissioner of Central Excise, Calcutta-IV v. Pandit D.P. Sharma*¹, and *Commissioner of Central Excise, Allahabad v. Himtaj Ayurvedic Udyog Kendra*² in connection with Banphool oil and Himtaj oil held that the ayurvedic hair oils, were medicines and should be properly classified under Tariff Heading 3303.03, rather than under Tariff Heading 3305.10 or 3305.50. Indeed the

learned counsel appearing on behalf of the respondent has not seriously contended otherwise in respect of the first three items.

9. As far as items 4, 5 and 6 are concerned, for the reasons stated earlier, we are of the view that they are also properly classifiable under Medicaments under Tariff Heading 3303.30.

10. The appeal is, accordingly, allowed and the decision of the Tribunal is set aside.

¹2003 (154) E.L.T. 324 (S.C.)

²2003 (154) E.L.T. 323 (S.C.)