

# SUPREME COURT OF INDIA

Commissioner of Central Excise, Mumbai

Vs.

Johnson and Johnson Limited

C.A.Nos.8277-8280

(Mrs.Ruma Pal and P. P. Naolekar JJ.)

22.09.2005

## JUDGMENT

### **Ruma Pal, J.**

1. The respondents import medicines which are classifiable under Chapter Heading 3003.10 of the *Central Excise Tariff Act, 1985* (hereinafter referred to as 'the Act'). We are concerned with the import of two particular medicines, namely, Eprex and Topamac. The question is whether these two medicaments were manufactured for the purposes of attracting duty under the Act.

2. Note 5 Chapter 30 has extended the meaning of 'manufacturers' and reads as follows:

"In relation to products of Heading No. 30.03, conversion of powder into tablets or capsules, labelling or relabelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'."

3. According to the Customs Excise and Service Tax Tribunal merely labelling or relabelling of the containers intended for consumers would not do, The products would have to be repacked from bulk packs to retail packs so as to render the Product marketable to the consumer for the activity to be termed as 'manufacture'.

4. The learned Additional Solicitor appearing on behalf of the appellant has impugned the decision of the Tribunal and has submitted that admittedly in this case there was labelling after the medicaments were imported. As far as repacking was concerned, it is submitted that the goods were imported in pallets with one big box containing two smaller boxes. The smaller boxes contained as sorted medicines of different potencies. These assorted medicines were in smaller units. The Eprex units contained syringes with six vials. These units were removed from the boxes, repacked in thermocole boxes of different sizes which were again put into cardboard boxes which were then marketed.

5. Similarly, as far as the Topamac was concerned, each unit consisted of ten tablets which were also put into cardboard boxes and marketed after the units were labelled. It is stated that the cardboard boxes in both the cases were in turn labelled containing, inter alia, the name of the medicine, the name of manufacture, the quantity, batch number, manufacturing date, expiry date and name of the marketing agency. Our attention has been drawn to the statement of the parties given under Section 14 of the *Central Excise Act, 1944*, by the agent of the respondent. The statement confirmed, inter alia, that there was repacking and labelling of the medicaments before sale to the dealer and stock transfer to other depots.

6. What has been overlooked by the appellant is that merely packing for being marketed would not do. The repacking would have to be from bulk packs to "retail packs" so as to render the product marketable directly to the consumer. There is no evidence relied upon by the appellants to the effect that the cardboard boxes in which the units were placed or the thermocole containers were "retail packs".

7. In that view of the matter, the appeals are dismissed but without any order as to costs.

C.A. Nos. 8728-8732/2003:

8. The respondents import items classifiable under Chapter 18 and Chapter 19 of the *Central Excise Tariff Act, 1985* (hereinafter referred to as 'the Act'). The issue is whether Note 3 to Chapter 18 and Note 3 to Chapter 19 which extend the meaning of manufacture by legal fiction to the labelling or relabelling of containers and repacking from bulk to retail packs would apply. For the reasons stated by us in the order passed in C.A. Nos. 8277-8280/2003 these appeals are also dismissed.

9. In these appeals there is an additional fact that the Commissioner of Central Excise had found as a fact that the products are imported as ready for sale to consumers in retail packs. These retail packs were then taken to the appellant's warehouses where stickers were affixed to them containing information like names and addresses of the importers, maximum retail price, net weight etc. In these cases the appellants therefore, admittedly merely imported ready to market retail packs. There is no evidence of the appellants' themselves indulging in any further activity which required the packing or repacking of bulk packing into retail packs within the extended meaning of 'manufacture' as contained in Chapter Note 3 in Chapters 18 and 19 of the Act.

10. The appeals are dismissed but without any order as to costs.