

CASE NO.:
Appeal (civil) 3880 of 1993

PETITIONER:
UNICHEM LABORATORIES LTD.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BOMBAY

DATE OF JUDGMENT: 03/09/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & RUMA PAL

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 87

The following Order of the Court was delivered :

The challenge in this appeal is to the correctness of the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/717/88-C. dated 26th April, 1993.

The point that arises for consideration is; whether the appellant is entitled to the benefit of Notification No.234/86, dated April 3, 1986, granting exemption to bulk drugs falling under sub-heading 2913.00 of Chapter 29 of Schedule to the Central Excise Tariff Act, 1985 from the date of filing of classification lists.

It would be relevant to refer to the facts giving rise to this appeal.

The appellant is a manufacturer of bulk drugs. The drugs manufactured by it were classified under tariff item 68 of the erstwhile Central Excise Tariff and they were exempt under Notification No.234/82 dated 1.1.1982. With effect from 1.3.1986, the new classification was given effect to under the Central Excise Tariff Act, 1985 (for short 'the Act') On March 3, 1986, under the Act the appellant filed classification lists categorizing the bulk drugs under the new tariff heading 30, having nil rate of duty. The Superintendent, Central Excise corrected the classification as falling under heading 2913.00 and pointed out that the bulk drugs were exempted. At that time, the rate of duty payable under heading 2913.00 was 15% and that was what the appellant had shown when it refiled the classification list. However, the appellant subsequently claimed the benefit of the said notification no.234/ 86 dated 3.4.1986. To comply with the requirement of the said notification, the appellant applied for a certificate to the Drugs Controller of the Government of India. The said certificate was issued on 24.6.1986. The appellant submitted the said certificate to the concerned authorities. On the ground that the appellant was not eligible for exemption and the duty payable at the rate of 15% was not paid, the Assistant Collector, Central Excise, issued three show cause notices on 24.7.1986, 6.11.1986 and 6.1.1987 which relate to the periods 1.3.1986 to 2.4.1986, 11.4.1986 to 27.7.86 and 28.7.1986 to 20.11,1986 respectively. Rejecting the claim of the appellant for exemption under notification no. 234, dated 3.4.1986, the Assistant Collector confirmed that it was liable to pay duty at the rate of 15%. On appeal, the Commissioner (Appeal) upheld the order of the Assistant Collector. On further appeal, on April 26, 1993, the CEGAT confirmed the order of the Commissioner (Appeals) on the ground that the appellant did not claim the benefit of exemption at the time of filing the classification list so as to enable the Assistant Collector to fix a period for production of certificate from the Drugs Controller of the Government of India to the effect that the drugs claimed for exemption were bulk drugs within the meaning of the explanation to the notification. It is that order of the CEGAT that is assailed in this appeal

We heard the learned counsel for the parties.

There is no dispute that the bulk drugs manufactured by the appellant fall under Chapter 29 and are classifiable under sub-heading 2913.00. It is also not in dispute that the rate of excise duty payable against such goods is 15%. It is admitted that on 3.4.1986, Notification No. 234/86 was issued by the Central Government granting exemption to bulk drugs classified under Chapters 28 and 29. It would be useful to read the notification here:

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central government hereby exempts bulkdrugs, falling under Chapter 28 or Chapter 29 of the Schedule to the Central Excise Tariff Act, 1986 (5 of 1986), from the whole of the duty of excise leviable thereon under section 3 of the Central Excise and Salt Act, 1944;

Provided that the manufacturer furnishes to the proper officer, a certificate from the Drugs Controller to the Government of India, within such period as the said officer may allow, to the effect that the drugs or chemicals which are claimed for exemption under this notification are the bulk drugs within the meaning of the bulk drugs given in the explanation to this notification, and are normally used for the diagnosis, treatment, mitigation or prevention of diseases in human being or animals, and used as such or as ingredient in any formation.

Explanation - In this notification, "bulk drugs" means any chemical or biological or plant product, conforming to pharmacopoeial standards, normally used for the diagnosis, treatment, mitigation or prevention of diseases in human being or animals, and used as such or as ingredient in any formation.

(Notification No. 234/86 C.E. dated 3.4.86)"

A perusal of the notification, quoted above, shows that it has three limbs. The first limb exempts the bulk drugs falling under Chapter 28 or Chapter 29 of the Schedule to the Central Excise Tariff Act, 1985. The second limb contains a proviso which embodies the conditions for availing the exemption. There are four requirements: (i) the manufacturer has to furnish to the "proper officer" a certificate from the Drug Controller of the Government of India; (ii) the certificate has to be furnished within such time as may be allowed by the said officer; (iii) the certificate must contain the recital that the drugs or chemicals which are claimed for exemption under the notification are the bulk drugs within the meaning of the explanation to the notification; and (iv) the bulk drugs are normally used for diagnosis, treatment, mitigation or prevention of diseases in human being or animals, and used as such or as ingredient in any formation. The third limb consists of the explanation which defines the expression 'bulk drugs'.

It is worth noticing that no time has been fixed by the "proper officer" for filling certificate of the Drug Controller of the Government of India by the manufacturer. Nor is it provided that the benefit of the exemption should be claimed at the time of filing of classification lists. The notification squarely applies to the appellant and indeed the benefit thereunder was extended from November 21, 1986 - the date of filing of amended list - instead of from March 3, 1986 and April 3, 1986 when classification lists were first filed. It is nobody's case that the appellant was not manufacturing bulk drugs during the relevant period.

The reason given by the Assistant Collector that the appellant itself indicated the rate of duty payable as 15% cannot be taken as a factor against it because, admittedly, the rate of duty payable in respect of the goods classifiable under sub-heading 2913.00 is 15%. The fact that the said notification has exempted the payment of duty in respect of bulk drugs

falling under the said sub-heading is an admitted fact. The Tribunal also erred in holding that the appellant should have claimed the benefit of the notification at the time of the filing of classification lists which is extraneous to the claim of exemption under the notification. That apart, the classification lists were filed by the appellant on 3.3.1986 and 3.4.1986 whereas, admittedly, the said exemption notification came to be issued only on 3.4.1986. The requirement which was insisted upon by the authorities and confirmed by the Tribunal, was a impossibility.

It has been noted above that the bulk drugs manufactured by the appellant fell under tariff item 68 of the erstwhile Central Excise Tariff and the appellant was enjoying exemption under Notification No.234/82. Tariff Item 68 of the old Act is, in terms, identical to sub-heading 2913.00 of the Schedule to the Act. As on the date of filing of the classification list, the earlier notification no. 234/782 was not operative. It was in all fairness that the appellant indicated the rate of duty payable @ 15% without indicating the exemption in view of the change in the system brought about by the Central Excise Tariff Act, 1985.

The notification under the Act - No. 234/86 - which came to be issued on April 3, 1986, exempts bulk drugs classified under sub-heading 2913.00 and the classification lists were filed by the appellant before issuance of the notification. Further, having regard to the fact that the Act came into force on the 28 February, 1986, the Parliament passed the Central Duties of Excise (Retrospective Exemption) Act, 1986 which provides for a new tariff, nomenclature as also rates of duties of excise. Section 2 of the said Act says.

"2. Retrospective effect for certain notifications.-(1) Every notification issued by the Government of India in the Ministry of Finance (Department of Revenue) on or after the 3rd day of March, 1986, but before the 8th day of August, 1986; in exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1994, for the purpose of, -

(a) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to the 28th day of February, 1986 notwithstanding the changes in the rates of duties of excise made by the Central Excise Tariff Act, 1985, the Additional Duties of Excise (Textiles and Textile Articles) Amendment Act, 1985 or the Additional Duties of Excise (Goods of Special Importance) Amendment Act, 1985; or

(b) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to the 1st day of March, 1986 notwithstanding the changes in the rates of duties of excise made by the Finance Bill, 1986;

shall, in so far as such notification relates to such goods, be deemed to have, and to have always had, effect on and from the 1st day of March, 1986."

This provision is self evident. The said Act was passed on 9th September, 1986. In view of the provisions of Section 2 of the said Act, quoted above, Notification No. 234 dated 3.4.1986 would relate back to March 1, 1986. Consequently, the appellant became entitled to the benefit of Notification No. 234/86 from March 1, 1986. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law-no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.

In the result, the order under challenge is set aside and it is held that the appellant is entitled to the benefit of the exemption under the said

notification from March 1, 1986, the date of filing classification lists.

The appeal is, accordingly, allowed. There shall be no order as to costs.

JUDIS