

1991 (56) ELT 532 : 1992 (37) ECC 96

GUJARAT HIGH COURT

Hon'ble Judges:A.P.Ravani and J.N.Bhatt JJ.

Aarex Laboratories Versus Union Of India

Special Civil Application No. 3382 of 1980 ; *J.Date :- MARCH 15, 1991

- DRUGS AND COSMETICS ACT, 1940
- DRUGS AND COSMETICS RULES, 1945

Drugs and Cosmetics Act, 1940 - Drugs and Cosmetics Rules, 1945 - notification no. 71/80 dated 1-3-1979 and 80/80CE dated 19-6-1980 - exemption - manufacturer of goods claiming benefit of the notifications - one manufacturer carrying on the activities of manufacture in premises of another - exemption not granted to licensee as actual manufacturer was entitled to the benefit - petition - held, directions given to the authority to recognise assessee as loan licensee in respect of goods manufactured by them at one another's premises, provided they fulfill conditions of loan licences.

Imp.Para: [[4](#)] [[5](#)] [[6](#)]

Cases Referred to :

1. Indica Lab V/s. Uoi, 1991 34 ECR 40

Equivalent Citation(s):

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JUDGMENT :-

A.P.Ravani, J.

1 Petitioner No. 1 is a partnership firm and is engaged in the business of manufacturing and selling patent proprietary medicines. It is manufacturing capsule and injectable products. The petitioner does not have the facilities of manufacturing tablets and syrup. Therefore, it entered into an arrangement with petitioner No. 2 Gujarat Pharmaceuticals and Chemicals Works, partnership firm for manufacture of tablets and syrup. Similarly petitioner No. 2 has entered into an arrangement for manufacturing of certain drugs at the factory premises of petitioner No. 1. It appears that petitioner No. 2 requested the officers of excise department to recognise it as loan licensee manufacturer in respect of certain drugs got manufactured by it at the factory premises of petitioner No. 1. The Superintendent of Central Excise, Assessment Range-II, Division III, Ahmedabad wrote a letter dated May 2, 1980 and informed that the loan licensee cannot be treated as manufacturer and the actual manufacturer should be treated as the manufacturer in respect of the goods manufactured by him whether on his own account or on behalf of the loan licensee. Therefore all clearances by him including those on behalf of

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loan licensee are to be treated as his clearances accordingly and no loan licensee can be considered eligible for the benefit under Notification No. 71/78 dated March 1, 1978.

2 It may be noted that by Notification No. 71/78, dated March 1, 1978, certain exemptions were granted to the manufacturers if they fulfilled the conditions laid down therein. Thereafter another letter dated August 5, 1980 has been written to petitioner No. 2 by the Superintendent of Central Excise and informed petitioner No. 2 that the value of clearances effected by it was exceeding the exemption limit. However, petitioner No. 2 claimed to pay duty under protest. Therefore, it was requested to clarify on what ground request for payment of duty under protest was made. Petitioner No. 2 was also informed that as per Notification No. 80/80, the goods manufactured and cleared by petitioner No. 1, M/s. Aarex Laboratories would be considered in the clearance value of M/s. Aarex Laboratories. Thereafter initially petitioner No. 1 has filed this petition on November 24, 1980 praying that the respondents be restrained from levying and collecting duty of excise in respect of the goods manufactured by M/s. Gujarat Pharmaceuticals and Chemicals Works, Ahmedabad, [now petitioner No. 2 herein], as a loan licensee at the premises of petitioner No. 1 in the total clearance effected by petitioner No. 1 for the purpose of exemption notification. It may be noted that after filing the petition, petitioner No. 2 has been joined as party. It is also prayed that the respondents be restrained from levying and collecting duty of excise in respect of the goods manufactured and cleared from the factory of petitioner No. 2 for and on behalf of petitioner No. 1 as loan licensee in respect of the first clearance made upto an aggregate value not exceeding Rs. 5 lakhs.

3 The question as to whether a loan licensee manufacturer can be a manufacturer as defined under the provisions of the Central Excises & Salt Act, 1944 came up for consideration before this Court in the case of M/s. India Lab. V/s. Union of India reported in 30(2) G.L.R. page 1120. Therein it is held that the loan licensees governed by the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945 can utilise the factory premises of other persons where they can get their goods manufactured under their own control and supervision and if they manufacture excisable goods, they would be treated as manufacturers within the meaning of the Act. This point is concluded by the aforesaid decision. Thus the concept of loan licensee manufacturer is also recognised under the provisions of the Central Excises and Salt Act, 1944. Therefore, the loan licensee manufacturer and the primary manufacturer are being recognised under the provisions of the Act and the Rules. Hence the Act and Rules and the notifications issued there-under are also required to be applied accordingly to such manufacturers.

4 There is no material on record to show that petitioner Nos. 1 & 2 are satisfying the conditions of Notification No. 80/80 dated June 19, 1980, for claiming exemption in respect of either total clearance effected by the petitioners or in respect of first clearance made upto the aggregate value not exceeding Rs. 5 lakhs. In view of the absence of material on record, the prayer made in para 37(b) of the petition cannot be granted. In para 37(b), the prayer is that the respondents be restrained from levying and collecting duty of excise in respect of the goods manufactured at and cleared from the factory of petitioner No. 2 (M/s. Gujarat Pharmaceuticals & Chemicals Works) for and on behalf of petitioner No. 1 (Aarex Laboratories) as a loan licensee in respect of the first clearance made upto an aggregate value not exceeding Rs. 5 lakhs. One of the conditions of Notification No. 80/80, dated June 19, 1980 reads as follows :-

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"Where a factory producing the specified goods is run at different times during a financial Year by different manufacturers the aggregate value of clearances of the specified goods from such factory in any such year shall not exceed rupees five lakhs and rupees ten lakhs respectively in terms of clauses

(a) and (b) of paragraph 1."

There is nothing on record to show as to what is the aggregate value of the clearances of the specified goods from the factory of petitioner No. 1 in the year in question. Therefore it cannot be assumed that such clearances have not exceeded rupees Rs. 5 lakhs or Rs. 10 lakhs as the case may be. Hence this prayer cannot be granted.

5 As far as prayer made in para 37(a) is concerned, it is drafted in a complex manner. Therefore we asked the learned counsel appearing for the petitioners as to what is the prayer made by the petitioners in para 37(a) of the petition. The learned counsel for the petitioners submitted that the petitioner seeks to restrain the department from clubbing the clearance made by petitioner No. 1 of the goods which are manufactured at the factory premises of petitioner No. 1 and the goods manufactured and cleared by petitioner No. 2, i.e. Gujarat Pharmaceuticals & Chemicals Works as loan licensee at the factory premises of petitioner No. 1. As far as this point is concerned, the same is covered by the decision of this High Court in the case of M/s. India Laboratories (supra). As held therein, the concept of loan licensee manufacturer is recognised even under the provisions of the Central Excises and Salt Act, 1944.

6 In the result the petition is partly allowed. The respondent are directed to recognise the petitioners as loan licensees in respect of the goods manufactured by them at the factory premises of one another, provided of course, all other conditions as regards the loan licensees are fulfilled by them. In view of the absence of material on record, the prayer with regard to grant of exemption in respect of first clearance made upto the aggregate value not exceeding Rs. 5 lakhs (or Rs. 10 lakhs) by petitioner No. 1 (Aarex Laboratories) from the factory of petitioner No. 2 (Gujarat Pharmaceuticals & Chemicals Works) is rejected. However, it is clarified that if the petitioner approaches before the appropriate officer of the department and claims exemption under Notification No. 80/80, dated June 19, 1980 by placing relevant material on record, the appropriate officer of the excise department may consider the same in accordance with law and on merits. Rule made absolute to the aforesaid extent. Interim relief granted earlier stands vacated.

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