
2009 eGLR_HC 10005033,2010 (1) GCD 562

Before the Hon'ble MR JAYANT PATEL, JUSTICE

UNICURE REMEDIES PVT. LTD. Vs. COMMISSIONER AND 1 - RESPONDENT(S)

SPECIAL CIVIL APPLICATION No: 2864 of 2003 , Decided On: 15/01/2009

Nanavati Associates, Rashmin M. Chhaya, Umang Oza

MR.JAYANT PATEL

1. The short facts of the case appears to be that the petitioner No.1 is a manufacturing company and the other petitioners are the authorised Stockists/Distributors of a product known as "Vital-Z" (hereinafter referred to as "the product/product in question"). As per the petitioners, the said product is a drug which may be prescribed by a Doctor for different use for medicinal purpose, therefore, octroi chargeable should be at the rate of Rs. 1 per ad voleram. Whereas, the officers of the respondent Corporation insisted for collection of the octroi at the rate of Rs. 3 per ad voleram treating the said product as food product. It is under these circumstances, the petitioners are constrained to approach before this Court by way of the present petition.

2. Heard Mr. KD Gandhi, learned counsel for the petitioners, Mr. Chhaya for the respondent No.1 and Mr.Oza, learned AGP for respondent No.2.

3. The only question to be considered is as to whether the Corporation would be entitled to charge octroi at the rate of Rs. 3 per ad voleram treating the product as falling under Entry No.30A or the octroi chargeable is at the rate of Rs. 1 per ad voleram under Entry No.37A.

4. It appears from the record that it is an admitted position that the product in question is Vital-Z. If it is considered as a drug, it would fall under Entry No.37A. However, if the product is treated as food item, it may fall under Entry No.30A. The aforesaid both the Entries, viz. Entry Nos. 30A and 37A, reads as under:

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Sr. No.	Item No.	Name and description of the article	Rate Rs.	P. Per @	64	30A
		Foodstuffs and food provisions including cheese, cocoa, biscuits, jams, marmalades, jelly, pickles, condensed milk, chocolates, confectionery, tinned fruits and vegetables, tinned food, tinned meat and fish, beverages and juices of all kinds, milk food preserved provision of all kinds, baking and curry powder, ham and bacon, cakes, sweetmeats and culinary and flavouring essences.	3.00	Pc. Adv. @	86	37A
		Drugs and medicines of all kinds including medical herbs, ayurvedic moorabbas used for medical purposes only, honey and ayurvedic natural herbs, substances used for medical purposes.				

5. As per the petitioners, the product is being manufactured by the petitioner No.1 Company and there is a Certificate produced of the Assistant Commissioner, Food & Drug Control Administration at Annexure-C dated 07.08.1999 and the details of the product are comprising of dextrose, sucrose, zinc sulphate, ascorbic acid, etc. In the very certificate, it has been certified as under:

"The above product is a drug product manufactured under a drug license. It is not a food product"

The aforesaid Certificate issued by the Drug Authority apparently goes to show that the product in question is a drug product to be used for medicinal purposes.

6. The attempt on the part of the respondent Corporation to justify the collection of octroi at the rate of Rs. 3 per ad voleram is on the premise that the said product is classified under Clause 17.2 of the Central Excise Classification which pertains to food and food preparations. Therefore, it was also submitted that as per the petitioner in the proceedings under Central Excise and Tariff Rules, the classification of the aforesaid product was declared and insisted as falling in clause 17.2.

7. Mr. Chhaya, learned counsel for the Corporation in furtherance to his submission, relied upon Chapter 17 of the Central Excise Tariff Rules which provides for various products of sugar and sugar confectionery. Therefore, it was attempted to submit that such product would fall in the category of sugar and therefore, food product and chargeable to the octroi at the rate of Rs. 3 per ad voleram under Entry No.30A.

8. As such, the classification of the product under Central Excise Act or the tariff cannot be directly equated with the classification made for levying of the octroi. It is only in the case of any genuine doubt, the reference may be extracted for understanding the composition of such product. Merely because a product is

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classified under the Sugar & Sugar Confectionery under Central Excise Tariff Act, it cannot be said that such would fall as a food product in every case. Entry No.17.02 of the Central Excise Tariff Act, reads as under:

"17.02 OTHER SUGARS,INCLUDING CHEMICALLY PURE LACTOSE, MALTOSE, GLUCOSE AND FRUCTOSE IN ANY FORM AND PREPARATIONS THEREOF; SUGAR SYRUPS NOT CONTAINING ADDED FLAVOURING OR COLOURING MATTER; ARTIFICIAL HONEY, WHETHER OR NOT MIXED WITH NATURAL HONEY; CAMEL -other sugars, including chemically pure lactose, maltose, glucose and fructose in any form."

Therefore, for chemically pure, aforesaid composition of the sugar in any form are included in the entry for the purpose of Central Excise tariff. However, if the aforesaid aspect is considered in light of Entry No.30A, it appears that Entry refers to any category of Group directly connected with provisions and usable items. It includes for several food products, cheese, cocoa, biscuit, jam, and all type of preserved provisions. None of such item includes for manufactured drug comprising of various chemical composition and to be used for medicinal purpose.

9. Further, Entry No.37A expressly provides for inclusion of all type of drugs and it also specifies the roots to be used for drugs and others. Therefore, whether a particular product can be said as drug or not and is being marketed as the product of drug or not, can be considered on the basis of the provisions of Drugs and Cosmetics Act and also the marketability of such product as being known to the public at large. As stated above, the competent authority under the Drugs and Cosmetics Act has duly certified the product as a drug. Not only that, but for manufacturing of such product, the license is also obtained under the Drugs & Cosmetics Act, 1940. The affidavit is filed by Senior Drug Inspector on behalf of the respondent No.2, viz. Commissioner of Food and Drugs Control Administration and in the said affidavit, in paras 4 & 5, there is a reference to the composition of the product and the conclusive opinion is as under:

"It is very clear that Vital-Z is a drug."

10. Therefore, as per the authority under the Drugs and Cosmetics Control Act, the product is a drug. It is intended to be used for the treatment of hypoglycemia, diarrhea, dehydration, etc.

11. In case of any food product, it can hardly be said as to be used for medicinal purpose. Food product are such which can be consumed by any person and its

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consumption is not based on suffering of any disease or for any treatment purpose. The items which as falling in Entry No.30A are all food products and not to be used for curing of any disease or to be used for any treatment purpose. It is only the product which is drug and to be used for medicinal purpose, can be used for treatment in certain disease. Entry No.37A includes all type of drugs. Once the product is certified as drug by the competent authority under the Drugs and Cosmetics Control Act, it is required to be treated as drug by the Municipal Corporation for the purpose of collection of octroi.

12. Under these circumstances, it deserves to be concluded that the product Vital-Z would fall under Entry No.37A for chargeability of the octroi by the respondent Corporation and it would not fall under Entry No.30A as a food product.

13. As a consequence thereof, the action of the respondent Corporation in charging the octroi at the rate of Rs.3 per ad voleram on the product Vital-Z deserves to be quashed with the declaration that the octroi chargeable would be under Entry No.37A falling in the category of all drugs.

14. It appears that pending the petition, on 15.06.2004, this Court had passed the following order:

"In the facts and circumstances of the case, interim relief as prayed for cannot be granted more particularly in view of the fact that there is no relief granted during the pendency of the petition and the petitioners are paying octroi at the rate of 3 per cent. Interests of the petitioners can be protected by directing the respondent No.1 to keep a separate account of the amount that may be deposited by the petitioners by way of octroi at the rate of 3% and the payment would be subject to final outcome of the present Special Civil Application. Notice with regard to interim relief is accordingly discharged. In the facts and circumstances of the case, the main Special Civil Application be placed for Final Hearing on 7th July 2004."

Therefore, the respondent No.1 was directed to keep the amount in the separate account and the petitioners had to deposit the octroi at the rate of Rs.3 per ad voleram and such payment was subject to the final outcome of the present petition.

15. In view of the above, the difference of the octroi collected by the respondent No.1 from the petitioners as if the food product minus the octroi to be collected as if the drug product will be required to be refunded by the respondent No.1 to the petitioners.

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16.Mr.Gandhi, learned counsel appearing for the petitioners at this stage also declared before the Court that if the Corporation is to refund the amount within the period of two months from the receipt of the order. The petitioners would not insist for any interest on the amount so collected. Hence, it is ordered that the refund of the requisite amount shall be made within a period of two months from the receipt of the order and therefore, no interest on the amount already collected is ordered by this Court.

17.The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.

Appeal allowed

