

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E 1102-2004-1104-2004

Date 24.09.2007

Assistant Registrar
C.E.S.T.A.T. New Delhi

To:
M/S DABUR INDIA LTD.
SAHIBABAD, GHAZIABAD

M/S DABUR INDIA LTD.

Appellant

C.C.E. GHAZIABAD

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. ~~492-494/07~~ dated ~~30-8-07~~ passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

2. Adv. Consult **SH. RAVI RAGHAVAN, ADV.,**
B-6/10, S.J. ENCLAVE,
N. DELHI - 29

3. ~~C.D.R.~~

~~J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, LP Estate, new Delhi

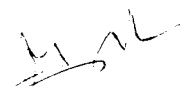
11. Taxmann Allied Service Pvt Ltd., 21-35, West Punjabi Bagh.

12. Co. Law Institution

13. TAX INDIA, B-XI 8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal Nos. 1102 – 1104 of 2004

[Arising out of Order-in-Appeal No. 544-546-CE/GZB/03 dated 28.11.2003
passed by the Commissioner of Central Excise (Appeals), Ghaziabad].

Date of Hearing/ Decision: 30.08.2007

For approval and signature:

Hon'ble Mr. Justice R.K. Abichandani, President

Hon'ble Dr. T.V. Sairam, Member (Technical)

- | | | |
|--|---|-----|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : | 73 |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | See |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes |

Dabur India Limited

Appellant

Vs.

CCE, Ghaziabad

Respondent

Mr. Ravi Raghavan, Advocate for the Appellant.

Mr. V.K. Agarwal, Authorized Representative (DR) for the Respondent.

CORAM: Hon'ble Mr. Justice R.K. Abichandani, President

Hon'ble Dr. T.V. Sairam, Member (Technical)

Final ORDER No. 492-494/2007EX

Per: Dr. T.V. Sairam

These are the appeals challenging the order of Commissioner (Appeals), Ghaziabad dated 28.11.2003. In the impugned order, the learned Commissioner (Appeals) has observed that the product in question namely, eranda oil (castor oil) manufactured by the appellants has been classified under the heading No. 3003.20 which reads as under:-

“Medicaments (other than patent or Proprietary) other than those which are exclusively used in Ayurvedic. Unani, Siddha, Homeopathic or Bio-chemic systems”.

2. The learned Counsel for the appellant has contended before us that the remarks made by the Commissioner (Appeals) in the order that the product in question cannot be classified as “ayurvedic medicine” simply because it has been manufactured in accordance with the prescribed in authoritative books and sold under generic names has no validity. In this context, the Apex Court judgement in the case of *Natural Health Products (P) Ltd., vs. Collector of Central Excise, Hyderabad* reported in 2003 (158) ELT 257 (SC) was relied upon. Para 39 of the said judgement which reads as follows was taken as the basis for this contention:-

*“39. We are also of the opinion that when there is no definition of any kind in the relevant taxing statute, the articles enumerated in the tariff schedules must be construed as far as possible in their ordinary or popular sense, that is, how the common man and persons dealing with it understand it. If the customers and the practitioners in Ayurvedic medicine, the dealers and the licensing officials treat the products in question as Ayurvedic medicines and not as Allopathic medicines, that fact gives an indication that they are exclusively Ayurvedic medicines or that they are used in Ayurvedic system of medicine, though it is a patented medicine. This is especially so when all the ingredients used are mentioned in the authoritative books in Ayurvedic. As rightly contended by the Counsel for the appellants, the essential character of the medicine and the primary function of the medicine is derived from the active ingredients contained therein and it has certainly a bearing on the determination of classification under the Central Excise Act. As held in *Amruthanjan* case, the mere fact that the ingredients are purified or added with some preservatives does not really alter their character”.*

2.1 The Hon'ble Supreme Court had further opined in this case, that relevant factors like the issue of licence to manufacture Ayurvedic drugs under the Drugs Act, the popular understanding of the products, the law laid down by this Court in the cases referred to in the said judgement and the circular issued by the Government of India in the light of the *Richardson Hindustan* etc. are to be taken into account while classifying Ayurvedic medicament under sub-heading 3003.30 of the Central Excise tariff.

3. In the present case, the issue involved is whether eranda tail (castor oil) manufactured by the appellants should fall under heading 3003.20 as claimed by the Revenue or 3004.31 as claimed by the appellants. For the sake of convenience, the tariff structure is reproduced below:-

“30.03	<i>Medicaments (including veterinary medicaments)</i>
3003.10	<i>Patent or proprietary medicaments, other than those medicaments which are exclusively Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic.</i>
3003.20	<i>Medicaments (other than patent or proprietary) other than those which are exclusively used in Ayurvedic Unani, Siddha, Homoeopathic or Bio-chemic systems. -Medicaments, including those used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-Chemic systems.</i>
3003.31	<i>Manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homoeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homoeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia.</i>
30.39	<i>Other”</i>

4. The contention of the appellant was that the product in question contains ingredients specified in the text which are authoritative for the system of Ayurveda. The procedure of preparing the product is in accordance with what was prescribed under a text called Bhaishajya Ratnavali. A sample of the vial containing the said oil produced before us is labelled as eranda tail (castor oil) and is indicated in Hindi that it is an Ayurvedic drug. The authoritative text namely, Bhaishajya Ratnavali is also mentioned.

5. The learned Counsel for the appellant has also produced a copy of the licence issued to the appellant by the licensing authority Ayurvedic Unani Sewa Nideshak, U.P. Lucknow in response to their reference dated 7.8.88 containing declaration regarding the said product which is duly attested by the Drug Inspector. In this license issued on 17.4.89 it is found that eranda tail is duly recognized as Ayurvedic medicine.

6. However, the learned Commissioner (Appeals) in his order in appeal has made such observation that the appellants were classifying the said product under

chapter sub-heading 3003.20 as 3003.20 as Allopathic Generic Medicine till 02.06.98 @ Nil rate of duty but when a duty of Central Excise @ 8% adv. was imposed on the goods they changed the classification under 3003.31 as Ayurvedic Generic Medicine.

6.1 Reply to this, the learned Counsel for the appellant has stated that as far back as in 1989 they had got approval of classification of eranda oil. He produced a copy of Form No. 1 (classification list filed on 01.05.89) in which the appellants have duly declared eranda oil 60 ml. (castor oil) to fall under the then tariff sub-heading 3003.30 treating them as Ayurvedic Medicament which was duly approved by the Assistant Collector of Central Excise at that time. In addition, yet another classification list filed on 29.3.94 filed with the Department which is also in Annexure 'A' at Sl.No. 68 refers to eranda oil (60 ml.) as one of the several products under Ayurvedic system.

7. The learned authorized representative (DR) for the Revenue goes by the wordings in 3003.20 emphasizing on the word "exclusively" and "system". It was contended that strictly going by the wording under 3003.20, the medicament namely eranda oil cannot be called as "exclusively" used in Ayurvedic system as the appellants themselves have been manufacturing castor oil I.P. in addition to eranda oil. It goes to show that the same item can be used either way either as eranda oil or as castor oil and not exclusively as an Ayurvedic medicine.

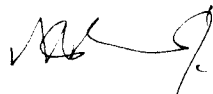
7. We have heard both sides and perused the record.


7.1 A plain reading of the tariff structure as above, particularly, in respect of 3003.20 would no doubt seem to place an emphasis on the exclusivity of the system of medicine, as held by the Revenue. However, when sub-heading 3003.20 is read with the contents of 3003.31 onwards there is a change in complexion. Medicament including those used with Ayurvedic Unani, Siddha, Homeopathic or Bio-chemic systems have been specific product under 3003.30 grouping.. The Hon'ble Supreme Court in *Natural Health Products (P) Ltd.*,

(supra) has observed that fact gives an indication whether they are exclusively ayurvedic medicines or that they are used in Ayurvedic system of medicine, though a patented medicine. Para 29 & 39 show that as long as a particular product is bought and sold as Ayurvedic medicine and whose composition and method of manufacture follow the prescription under the ancient text and the same is recognized as Ayurvedic medicine by the concerned authorities under law, irrespective of the fact whether such Ayurvedic medicine is capable of being used in system other than Ayurvedic system cannot make such medicine as non Ayurvedic medicine. As the product in question is very much an Ayurvedic medicine, in our opinion, they cannot be excluded out of the sub-heading 3003.31. Basing on the tariff sub-heading, we find that the word "exclusively" used under 3003.20 appears to create a disharmony which leads to a paradoxical situation as in the present case. However, examining the rest of the sub-heading under 3003 such situations could be avoided.

6. In view of the above reasoning the impugned order is set-aside. The appeal is allowed.

(Order dictated and pronounced in the open Court)


[Justice R.K. Abichandani]
President


(Dr. T.V. Sairam)
Member (Technical)

[Pant]