

M/S. ICPA HEALTH PRODUCTS (P) LTD.

v.

COMMISSIONER OF CENTRAL EXCISE, VADODARA

APRIL 20, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

Central Excise Tariff Act, 1985; Tariff Item Nos. 38.08 and 3003.10; Note 2(1) to Chapter 30 and Note 1(c) to Chapter 38; Notification No. 28/88-CE dated March 1, 1988:

Classification—Principles of—Tariff Item 38.08 or 3003.10—Hexiprep, Hexiscrub (Surgiscrub) and Haxiaque—Revenue held the products classifiable under Tariff item No. 38.08—Upheld by Tribunal—On appeal, Held: Since the products have therapeutic properties and prophylactic uses, they are medicament as defined under Chapter 30—Products would be classifiable under Tariff Item No. 3003.10.

Words and Phrases:

'Prophylactic'—Meaning of in the context of Central Excise Tariff Act, 1985.

The question which arose for consideration in these appeals was as to whether the products Hexiprep, Hexiscrub (Surgiscrub) and Haxiaque would be classifiable under Tariff Item No. 38.08 as held by the Revenue and upheld by the Tribunal (CEGAT) or under Tariff Item No. 3003.10 of the Central Excise Tariff Act as contended by the assessee.

Allowing the appeals, the Court

HELD: The labels of the three products describe them as "superior surgical microbicidal solution". Hexiprep is used to paint the skin as required to disinfect the skin before surgery. It is for rapid skin disinfection prior to surgery. Hexiaque is used as a skin disinfectant to paint the skin before surgery and as a wound disinfectant. It is described as a cleanser and is used for cleansing of wounds and abrasions and minor cuts. Hexiscrub is for use on hands and forearms of Surgeons for rapid hand

A disinfection prior to surgery. The products therefore have prophylactic uses. If a product comprises of two or more constituents which have been mixed together for therapeutic or prophylactic uses, then it would be medicament. The Appellants' products were examined by the Chemical Examiner who has opined that these products have therapeutic properties.

B Hence the products cannot be classified under Tariff Item No. 38.08 but will be classifiable under Tariff Item No. 3003.10. [411-B; 412-C]

Oxford Dictionary, 9th Edition, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4766-4768 of 1998.

From the Judgment and Order dated 1.5.98 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. Nos. 320-22/98-C in A. Nos. E-770 of 1992-C and E/38-39 of 1995-C

D Alok Yadav for V. Balachandran for the Appellant.

Soli J. Sorabji, Attorney General for India, Ms. Vibha Makhija, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

E S.N. VARIAVA, J. These Appeals are against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (for short CEGAT) dated 1st May, 1998.

Briefly stated the facts are as follows:

F The Appellants manufacture, amongst other things, Hexiprep, Hexiscrub (Surgiscrub) and Haxiaque. They classified these items under Tariff Item 3003.10 and paid duty under Notification No. 29/88-CE dated 1st March, 1988. Eight show-cause-notices were issued to them calling upon them to show cause as to why the products should not be classified under Tariff Item

G 38.08. The Adjudicating Authority then upheld the classification as proposed in the show-cause-notices. The Appeal filed by the Appellants to CEGAT has been dismissed by the impugned Judgment.

The three products of the Appellants were examined by the Chemical Examiner who opined that they contained chlorhexidine gluconate solution

H BP, which had therapeutic properties. The Chemical Examiner also opined

that they were used as disinfectants and were thus covered by Tariff Entry 38.08. A

The labels of the three products describe them as “superior surgical microbicidal solution”. It is admitted that Hexiprep is used to paint the skin as required to disinfect the skin before surgery. It is for rapid skin disinfection prior to surgery. Hexiaque is used as a skin disinfectant to paint the skin before surgery and as a wound disinfectant. It is described as a cleanser and is used for cleansing of wounds and abrasions and minor cuts. Hexiscrub is for use on hands and forearms of Surgeons for rapid hand disinfection prior to surgery. B

At this stage, the two Tariff Items may be set out. Tariff Item 3003.10 reads as follows: C

“3003.10 - Patent or proprietary medicaments, other than those medicaments which are exclusively Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic.” D

Tariff Item No. 38.08 reads as follows:

“38.08 - Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products.” E

CEGAT has held that the Appellants’ products are disinfectants and are therefore covered under Tariff Item 38.08. However, Chapter Note 1(c) of Chapter 38, in which Tariff Item 38.08 falls, indicates that the Chapter does not apply to “Medicaments”. Chapter Note 2(i) to Chapter 30 defines “Medicaments” as follows: F

““Medicaments’ means goods (other than foods or beverages such as dietetic, diabetic or fortified foods, tonic beverages) not falling within heading No. 30.02 or 30.04 which are either :-

- (a) products comprising two or more constituents which have been mixed or compounded together for therapeutic or prophylactic uses; or G
- (b) unmixed products suitable for such uses put up in measured doses or in packings for retail sale or for use in hospitals.”

Thus, if a product comprises of two or more constituents which have been H

- A** mixed together for therapeutic or prophylactic uses, then it would be a medicament. As stated above, the Appellants' products were examined by the Chemical Examiner who has opined that these products have therapeutic properties. Also admittedly these products are used for disinfecting the skin prior to surgery. As per Concise Oxford Dictionary, 9th Edition, the term
- B** "prophylactic" would mean "intending to prevent diseases, a preventive medicine or course of action". It is clear that the Appellants' products are used as a cleanser for cleaning of wounds and abrasions and minor cuts and to disinfect the skin prior to surgery. They therefore also have prophylactic uses. As the products have therapeutic properties and prophylactic uses they are Medicament falling under Chapter 30. As they fall under Chapter 30 by
- C** virtue of Note 1(c) to Chapter 38, they do not fall within Chapter 38. It will therefore have to be held that the products cannot be classified under Tariff Item 38.08. In this view of the matter, the impugned Judgment cannot be sustained and is accordingly set aside. It is held that the Appellants' products will be classifiable under Tariff Item 3003.10.
- D** The Appeals are accordingly allowed. There will be no order as to costs.

S.K.S.

Appeals allowed.