

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2005

C O R A M

THE HONOURABLE Mr.JUSTICE S.R.SINGHARAVELU

Criminal Original Petition Nos. 4795, 4797 and 4802 of 2004
and
Crl.M.P.Nos. 1419, 1423 and 1429 of 2004

1. M/s. Velvette International Pharma
Products Ltd.
Rep. by its Managing Director
No.8A, Dr.Ambedkar Road
Kodambakkam
Chennai 600 024
2. Dr.C.K.Rajkumar
Managing Director
M/s. Velvette International Pharma
Products Ltd.
No.8A, Dr.Ambedkar Road
Kodambakkam
Chennai 600 024
3. Mrs. R.Sujatha
Director
M/s. Velvette International Pharma
Products Ltd.
No.8A, Dr.Ambedkar Road
Kodambakkam
Chennai 600 024.

Petitioners in all the petitions

Vs

The Deputy Commissioner of Central Excise
Prosecution Unit
O/o the Commissioner of Central Excise
MHU Complex
694, Anna Salai
Nandanam, Chennai 600 035

Respondent in all the petitions

Criminal Original Petitions are filed under Section 482
Cr.PC as stated therein.

For petitioners	...	Mr.Perumbulavil Radhakrishnan
For respondent	...	Mr.P.N.Prakash, Spl.P.P.`

O R D E R

The petitioners filed the above criminal original petitions praying to call for the records, respectively, in EOCC Nos.299, 297 and 298 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. The above criminal original petitions are filed to quash the complaint dated 16.04.2003 preferred by the Deputy Commissioner of Central Excise, Prosecution Unit against the petitioners.

3. The complaint was preferred on the ground that the A1-Company was managed by A2 and A3 and that they have been found to have contravened Central Excise Rules as indicated in paragraph 18 of the complaint; that the complaint was filed in the year 1993-94 and the duty amount involved was said to be Rs.29,80,530/-; that the amount of Central Excise Duty evaded by the petitioners/accused for the period from 1991-92 to 1993-94 was said to be Rs.84,44,286/-; that along with the complaint, a memo of evidence was furnished detailing the materials that were based in order to substantiate the contentions in the complaint.

4. The first petitioner/A1 company was known as M/s. Pharma Care Pvt. Ltd. until 21.01.1991, when they obtained a Certificate of Incorporation consequent to the present name, it had their factories at SIDCO Industrial Estate, SIDCO Nagar, Villiwakkam, Chennai and they were manufacturers of 'NIVARAN 90', Cough Syrup, said to be prepared by herbal method, which contains only ayurvedic materials.

5. As per the intelligence gathered by the complainant, and inspection over 13 premises indicated in the complaint, it was found that the materials the petitioners used in preparation of the above said NIVARAN 90, never contained any herbal materials but only contained synthetics.

6. The complainant, based his above contention upon the Test Report by the Chemical Examiner, Chennai Custom House coupled with the fact of availability of synthetic raw materials found within the premises of manufacturing. According to the complainant, non-ayurvedic preparation were shown as ayurvedic preparation, exclusively for the purposes of evading excise duty.

7. Learned counsel for the petitioner submitted that there are some tests to find out whether the product contained only ayurvedic materials or otherwise. The main tests are common parlance Test and ingredients test as was laid down in a case

reported in 2003 (9) SCALE 542 (M/S NATURALLE HEALTH PRODUCTS (P) LTD v. COLLECTOR OF CENTRAL EXCISE, HYDERABAD). That was a case where the disputed products were Vicks cough drops and Vicks Vaporub throat drops. In deciding that case, the propositions laid down in an earlier case reported in 1995 (77) ELT 500 (AMRUTANJAN LIMITED v. COLLECTOR OF CENTRAL EXCISE) were also applied.

8. In the said Amrutanjan case, it was held that the ingredients that was used in preparation of ayurvedic medicines, even if they are used after refinement or bringing them to pharmaceutical quality, they do not become synthetic in nature. It is immaterial that the same articles bearing a different nomenclature are also known and used in allopathic system.

9. Also by relying upon the portion culled out in paragraph 26 of the Vicks Case, learned counsel for the petitioners submitted that sometimes '*navacharam*' an ayurvedic material may be the same article as *ammonium chloride* and nevertheless it becomes a non-ayurvedic product.

10. Again it was submitted that simply because there is no definition in Central Excise Tariff Act about the ayurvedic medicines, one cannot be allowed to import definition of ayurvedic medicines as found in Section 3(a) of the Drugs and Cosmetics Act, in a case of similar nature for evasion of excise duty.

11. The following observation made in Richardson Hindustan Ltd. v. CCE reported in 1998 (35) ELT 424, was culled out and relied upon in the case law reported in 2003 (9) SCALE 542 (Naturalle Health Products vs. C.C.E.):

"It is now a settled principle of law that when there is no definition of any word in the relevant statute, the word must be construed in its popular sense i.e., the meaning as understood by the people conversant therewith. The appellants have produced opinions from physicians, certificates from consumers and certificates from retail sellers to show that, in the common parlance, Vicks Vaporub and Vicks Inhaler are treated as Ayurvedic medicines. The registration certificate issued by the D.G.T.D. and the manufacturing licence issued by the licensing authority also show the appellants' product as Ayurvedic medicines".

12. By relying upon the above propositions, learned counsel for the petitioners submitted that even though some synthetic materials are naturally found available in the ayurvedic preparation manufactured by the petitioners, that will not make the herb to lose its ayurvedic character. What is to be noted here is that such synthetic materials found in the manufacturing premises of petitioners were not the extracts derived from the Herbs; but only directly purchased synthetics as probalised by statements of its sellers. It is not also the case of petitioners that they extracted the Herbs and by which process gathered the synthetics contained in such Herbal plants. While such is the case, the proposition in the above case laws cannot be made applicable to the present facts.

13. Learned Government Advocate on the criminal side contended that there is no difference of opinion regarding the propositions of law so laid down. But, factually, according to the intelligence and the materials gathered thereon, what the petitioners were utilising for the purpose of manufacture of NIVARAN 90 SYRUB were only synthetic materials and in order to substantiate their claim they have found such synthetic materials available in the premises of the petitioners and the complainant had also recorded statements from the concerned suppliers from whom, the petitioners have purchased those raw materials. So it is for the petitioners to explain as to how and under what circumstances they were necessitated to purchase synthetic materials which could as well be utilised for the preparation of their products. Unless and until satisfactory explanation comes forth from the petitioners, it is possible, from the circumstances narrated above, that they should have necessarily purchased the synthetic articles only to make it useful in the manufacture and production of the so-called ayurvedic preparation-NIVARAN 90. There are elaborate and effective materials contained in the memo of evidence cited by the complainant and all those indicate prima facie case against the petitioners. I do not find any factual materials to quash the proceedings. Hence, the criminal original petitions are dismissed. Consequently, connected CrI.M.Ps. are also dismissed.

kvsg/vsi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai-8

2. -do- Thro" The Chief Metropolitan Magistrae
Egmore, Chennai-8.

3. The Deputy Commissioner of Central Excise
Prosecution Unit
O/o the Commissioner of Central Excise
MHU Complex
694, Anna Salai
Nandanam, Chennai 600 035

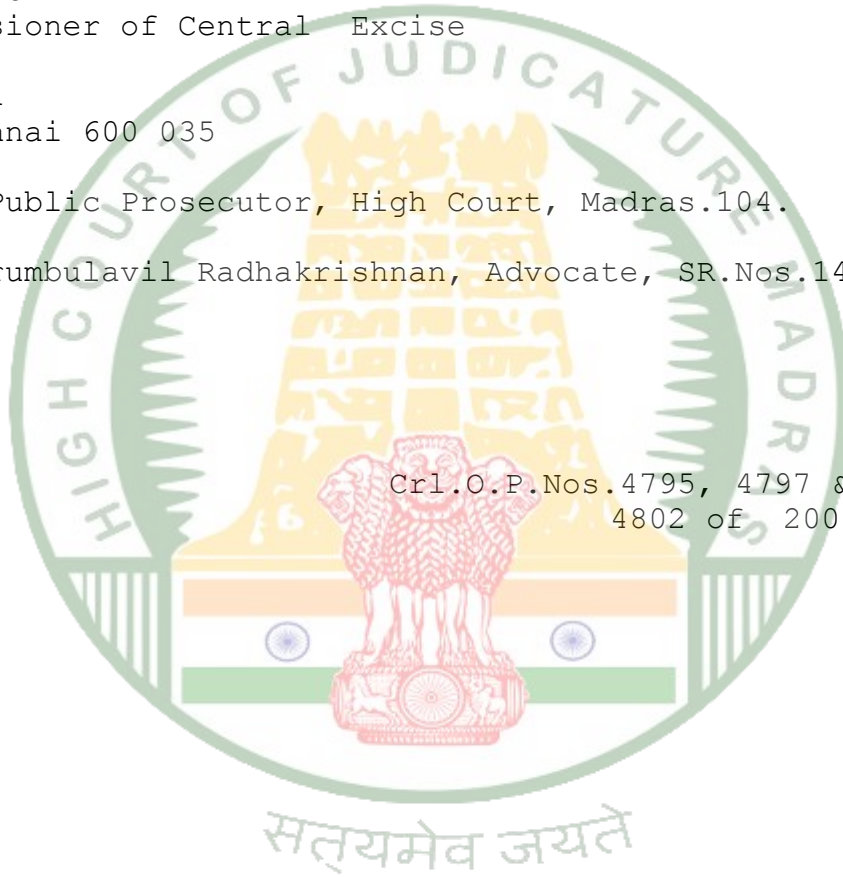
4.The Special Public Prosecutor, High Court, Madras.104.

3 ccs to Mr.Perumbulavil Radhakrishnan, Advocate, SR.Nos.14729 to
14731

klt (co)

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Crl.O.P.Nos.4795, 4797 &
4802 of 2004



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