

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10479 of 2015 - DB

(Arising out of OIO-DMN-EXCUS-000-COM-022-023-14-15 dated 12/12/2014 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

VVF India Limited

.....Appellant

Formerly Known As Vita Biopharma Pvt Ltd
Plot No 141 & 143, Panchal Udog Nagar,
Bhimpore, Nani Daman
Daman, U T of Daman

VERSUS

Commissioner of C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

APPEARANCE:

Shri Anand Nainawati, Advocate for the Appellant

Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. 11536/2024

DATE OF HEARING: 13.03.2024
DATE OF DECISION: 11.07.2024

RAMESH NAIR

The issue involved in the present case are as under:-

- (i) Whether the Appellants have rightly classified the product Suncros UVA Lotion/Gel/Hyclean Cream as medicaments under Chapter Sub-Heading No. 3004 of the First Schedule to the Central Excise Tariff Act, 1985 or whether the same is classifiable as cosmetics under Chapter Sub-Heading No. 3304 of the First Schedule to the Central Excise Tariff Act, 1985?
- (ii) Whether extended period of limitation is invocable in the case of show cause notice dated 06.03.2013?

2. Shri Anand Nainawati, Learned Counsel appearing on behalf of the appellant submits that the product 'Suncros UVA' Gel and Lotion /Hyclean cream is correctly classify under heading No. 30049099 as 'Medicaments'. Accordingly, concessional rate under Sl. No. 62 of Notification 04/2006-CE dated 01.03.2006 as amended was available to the appellant. He submits that as per the composition of the product, it is clear that the same is manufactured out of various USP/IP drugs and other chemical and as per the ingredient of the product in wearing proportion it is to provide a comprehension protection against UV rays that can cause damaging skin cells leading to sunburn or even skin cancer.

2.1 He submits that the product is manufactured under drug manufacturing license. On the package of the product the product label clearly state that the product is to be sold by retail on the prescription of registered medical practitioner also. The said declaration is in accordance with the requirements of Rule 96 of the Drugs and Cosmetics Rules, 1945. Further, the product can only be administered by a licensed cosmetologist, dermatologist or a qualified healthcare professional. Therefore, the product is clearly medicament and correctly classifiable under 3004 and not under 3304 as cosmetic.

2.2 He vehemently argued that the major part of the demand is hit by limitation as the issue relates to the classification of the goods and entire facts were revealed to the department the objection was raised only on the basis of EA-2000 audit therefore there is no suppression of fact. Hence the major demand under extended period is liable to be set aside only on limitation. In support his submission he placed reliance on the following judgments:-

- CCE v. Ciens Laboratories- 2013 (295) ELT 3 (SC)
- Puma Ayurvedic Herbal (P) Ltd Vs CCE- 2006 (196) ELT 3 (SC)
- CCE Vs Wockhardt Life Sciences Ltd- 2012 (277) ELT 299 (SC)
- Griffon Laboratories Pvt. Ltd Vs CCE 2003 (156) ELT 787 (T)
Affirmed by the Hon'ble Supreme Court of India 2004 (164) ELT A-32 (SC)
- Dabur India Ltd Vs CCE- 2009 (236) ELT 506 (T)
Affirmed by the Hon'ble Supreme Court of India- 2012 (283) ELT A-112 (SC)
- VVF Ltd Vs CCE- 2016 (334) ELT 579 (SC)
- Sujanil Chemo Industries Vs CCE-2005 (181) ELT 206 (SC)
- CCE Vs Sharma Chemicals Works- 2003 (154) ELT 328 (SC)
- Muller & Phipps (India) Ltd Vs CCE- 2004 (167) ELT 374 (SC)
- Meghdoot Gramodyog Sewa Sansthan Vs CCE- 2004 (174) ELT 14 (SC)
- State of A.P Vs Linde India Ltd.- 2020 (36) GSTL 3 (SC)
- State of Goa Vs Colfax Laboratories Ltd- 2003 (158) ELT 18 (SC)
- Commissioner Vs Time Pharma- 1999 (107) ELT A117 (SC)
- CCE Vs Hindustan Lever Ltd.- 2015 (323) ELT 209 (SC)
- HPL Chemicals Ltd Vs CCE- 2006 (197) ELT 324 (SC)
- CCE Vs Vicco Laboratories- 2005 (179) ELT 17 (SC)
- CC Vs Sunrise Traders- 2022 (382) ELT 23 (SC)
- Hewlett Packard India Sales Pvt. Ltd Vs CC- 2023 (383) ELT 241 (SC)
- CCE Vs Dermocare Laboratories (G) Pvt. Ltd- 2010 (259) ELT 405 (T)
- Apex Electricals Pvt. Ltd Vs UOI- 1992 (61) ELT 413 (Guj.)
- Unique Resin Industries Vs CCE- 1995 (75) ELT 861 (T)
- Continental Foundation JT Venture Vs CCE- 2007 (216) ELT 177 (SC)
- Cadila Pharmaceuticals Ltd Vs CCE- 2017 (349) ELT 694 (Guj.)
- Padmini Products Vs CCE- 1988 (35) ELT 543 (T)
- CCE Vs Chemphar Drugs & Liniments- 1989 (40) ELT 276 (SC)
- Jaiprakash Industries Ltd Vs CCE- 2002 (146) ELT 481 (SC)
- Pahwa chemicals Pvt. Ltd Vs CCE- 2005 (189) ELT 257 (SC)
- CCE Vs Ishaan Research lab (P) Ltd- 2008 (230) ELT 7 (SC)
- CCE Vs Raja Forgings & Gears Ltd- 2009 (233) ELT 404 (T)
Affirmed by the Hon'ble Supreme Court of India-2016 (337) ELT A42 (SC)
- Industrial Filter & Fabrics Pvt. Ltd Vs CCE- 2016 (3) TMI 266-CESTAT

- Biomax Life Sciences Ltd Vs CCE- 2021 (375) ELT 263 (T)
- Sikkim Organics Vs CCE- 2022 (7) TMI 714-CESTAT
- Narmada Bio Chem Pvt. Ltd Vs CCE- 2019 (370) ELT 1276 (T)
- CCE Vs Saurashtra Cement Ltd.- 2010 (260) ELT 71 (Guj.)
 Affirmed by the Hon'ble Supreme Court of India- 2013 (292) ELT A-98 (SC)
- CCE Vs Harish Silk Industries- 2013 (288) ELT 74 (Guj)
- CCE Vs Titan Industries Ltd.- 2014 (309) ELT 731 (T)
- CCE Vs Beehive Foundry Engineering Works- 2014 (3010) ELT 516 (T)

3. Shri Tara Praksah, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding in the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue to be decided in the present case is that whether the appellant's product is classifiable as medicament under CTH 3004 or as cosmetics under CTH 3304 and; whether the demand for the extended period is hit by limitation or otherwise.

4.1 As regard the merit of the case we find that appellant have produced ample evidences such as the ingredients used in the manufacture of the product namely UVA Lotion/Gel/Hyclean Cream, the package of the product and label states that product is to be sold by retail on the prescription of registered medical practitioner only. In such case the product can be administered by licensed cosmetologist, dermatologist or a qualified healthcare professional. It also states that the product is to provide comprehensive protection against UV rays that can cause skin damage, sun burn and skin cancer. In our view as per the above facts the product prima facie classifiable under 3004 as medicaments. We also observed that if at all a product is cosmetic and if the package contain that the same can be

use only on the prescription by a medical practitioner, in such case no one will purchase the said product as cosmetic therefore such mention on product is a vital evidence that the product is prima facie medicament not a cosmetic. However it is observed that the adjudicating authority have come to the conclusion that the product is a cosmetic classifiable under 3304 only on his own assertion and presumption by common sense. However, as per the nature of the product since the same being highly technical, a non technical person cannot be expected to arrive at conclusion about the classification of a product contains various drugs and chemicals. In our view the adjudicating authority was suppose to either get the product tested or at least obtain an expert opinion from authorized and recognized independent pharma/chemical authority before deciding the classification. Therefore in our view the observation of the learned Commissioner in the impugned order is based on incomplete/ premature material which needs to be reconsidered. Therefore on merit we are of the view that the matter should be remanded to the adjudicating authority.

4.2 As regard the appellant's submission on demand being hit by limitation, we find that the issue involved is pure classification of goods and the issue is complex as the rival entries of medicament and cosmetic. Various similar products have been the subject matter in various litigation before the Hon'ble Supreme Court and Tribunal. Therefore, there is absolutely no intention of the appellant to evade the payment of duty. Having said so we find that the objection was raised during EA-2000 Audit of the appellant's record, the appellant have been filing the ER1 return regularly wherein they have declared their product and also claimed the exemption notification under the classification 3004. In this position we do not find anything which suggests that there is suppression of fact on the

part of the appellant with intent to evade the payment of excise duty. Therefore the demand for the extended period is not sustainable on the ground of limitation. Therefore, the demand for the extended period is set aside without going into merit of the case in such demand. However the merit needs to be reconsidered by the adjudicating authority for normal period.

5. Accordingly, we set aside the impugned order. Consequently the demand for the extended period is set aside and for the demand under normal period, the matter is remanded to the adjudicating authority. The appeal is disposed of in the above terms.

(Pronounced in the open court on 11.07.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C L MAHAR)
MEMBER (TECHNICAL)**

Raksha