

## HEALTHWAYS DAIRY PRODUCTS CO.

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v.

## UNION OF INDIA

October 6, 1975

[A. ALAGRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

*Central Excise Rules, 1944, r. 8(1)—Exemption Notification—‘Condensed Milk’, if includes ‘Condensed Skimmed Milk’.*

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By virtue of a Notification dated March 1, 1970, issued by the Central Government under r. 8(1) of the Central Excise Rules, 1944, preparations of milk, leviable to excise duty under the Excise Act, 1944, became exempt from the levy; but, from that exemption were excluded certain milk preparations, namely, items 12 and 13 of the Schedule annexed to the Notification. They refer to ‘milk powder, but excluding such powder specially prepared for feeding of infants’; and ‘condensed milk, whether sweetened or not’, respectively. The appellant challenged the levy of excise duty on condensed *skimmed* milk, which he manufactured, on the ground that it fell within the exemption Notification and not within item 13 of the excluded items. The High Court dismissed the writ petition holding that condensed *skimmed* milk was also condensed milk.

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Allowing the appeal to this Court,

HELD: (1) For the purpose of levy of excise duty or any other similar tax the description of goods as popularly and commonly understood has to be taken as the description of the same goods in the relevant provisions of the statute or the rules. In common parlance milk means the full cream milk and it becomes skimmed milk when cream is extracted from it. [95 A—B].

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(2) In the present case, there are materials to show that the Government itself treated ‘Condensed milk’ and ‘Condensed skimmed milk’ as different milk preparations. [95 H].

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(a) In Annexure IV to the Hand Book of Self-Removal Procedure under Central Excise Rules, 1944, published in June, 1972 by the Central Board of Excise, are items 13 and 14 corresponding to items 12 and 13 of the Schedule to the exemption Notification. Against each item certain important raw materials are mentioned of which the assessee has to maintain accounts. Against milk powder, the raw materials shown are *both fresh milk and skimmed milk*, while, against condensed milk *only fresh milk* is mentioned. [95 G—H].

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(b) Further, r. 42 of the Prevention of Food Adulteration Rules, 1955, prescribes various forms of labels to be put on tins of condensed milk and they also refer to condensed *full cream* milk and condensed *skimmed* milk separately. [96 A—D].

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(3) The fact that the appellant had a manufacturing licence only for the manufacture of condensed milk while he was in fact manufacturing condensed skimmed milk will not take condensed skimmed milk out of the exemption-notification and include it in the excluded item. Under s. 6 of the Act, a licence would be required for the manufacture of condensed skimmed milk and the appellant, by manufacturing condensed skimmed milk without a licence, may be committing an offence. But, if condensed milk is exempt from the levy of excise duty by the Central Government in exercise of its power under r. 8(1), the exemption cannot be affected by the provision for taking a licence for its manufacture. [96 F—H].

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(4) The fact that the appellant was showing separate prices in the list of prices for condensed milk (full cream) and condensed milk (skimmed) would not help in the determination of the question. Unless and until skimmed milk is included in item 13 of the exemption Notification, it remains an item of goods exempt from the levy of excise duty. [97 A—B].

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1257 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 5th May 1972 of the Allahabad High Court in Civil Misc. Writ Petition No. 5546 of 1971.

*M. Natesan and N. H. Hingorani*, for the Appellant.

**B** *Govind Das and Girish Chandra*, for the Respondents.

The Judgment of the Court were delivered by

**C** UNTWALIA, J. The appellant in this appeal by special leave is a registered partnership firm and is carrying on business of manufacturing a number of milk products including Condensed Milk and Condensed Skimmed Milk. By the Finance Act, 1969 item 1B was added to the First Schedule of The Central Excise and Salt Act, 1944—  
**D** hereinafter called the Excise Act, levying 10% *ad valorem* duty on “prepared or preserved foods put up in unit containers and ordinarily intended for sale including preparations of . . . .milk . . . . .” In exercise of the powers of the Central Government under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the earlier notifications the Central Government issued Notification No. G.S.R. 339 dated the 1st March, 1970 exempting prepared or preserved foods falling under Item No. 1B of the first Schedule of the Excise Act other than those specified in the Schedule annexed to the notification from the whole of the duty of excise leviable thereon. In the Schedule is mentioned as items 12 and 13 :

“12. Milk powder but excluding such powder specially prepared for feeding of infants;”

**E** “13. Condensed milk, whether sweetened or not;”

Thus preparations of milk leviable to excise duty under the Excise Act became exempt from the levy of the duty. But from that exemption were excluded certain milk preparations mentioned in items 12 and 13. On and from the 1st March, 1970 the Excise authorities levied excise duty on condensed milk and condensed skimmed milk manufactured by the petitioner treating both of them as included in Item 13 of the Exemption Notification dated the 1st March, 1970. For some-time the petitioner paid excise duty not only on condensed milk but also on condensed skimmed milk. Later he objected to the payment of such duty on the latter product on the ground that condensed skimmed milk fell within the Exemption Notification and not within the excluded Item 13 of that notification. The authorities did not accept his stand to be correct and issued two notices dated 4-8-1971 and 7-8-1971 demanding a sum of Rs. 1,048/- and Rs. 3,064/- respectively as duty payable on condensed skimmed milk manufactured by the petitioner during certain periods. The petitioner filed a writ application in the Allahabad High Court to challenge the demand of excise duty on condensed skimmed milk. A Bench of the High Court took the view that condensed skimmed milk was also condensed milk covered by the excluded Item 13 of the Exemption Notification dated the 1st March, 1970. It, therefore, dismissed the writ application. Hence this appeal.

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It is well-established by several authorities of this Court that for the purpose of levy of excise duty or any other similar tax the description of goods as popularly and commonly understood has to be taken as the description of the same goods in the relevant provisions of the Statute or the Rules. In this case there are materials to show that condensed milk and condensed skimmed milk are two different items of milk preparations. In common parlance milk means the full cream milk as milched from the cattle. It becomes skimmed milk when cream i.e. fat is extracted from milk. Thereafter the skimmed milk which also can be called a form of preparation of milk is known as such. It becomes easy to digest and is used in preparation of other milk products, which are different from the milk products prepared from full cream milk. In the Hand Book on Self Removal Procedure under The Central Excise Rules, 1944, 3rd edition published in June, 1972 by the Central Board of Excise and Customs is to be found Instruction 8(b) to say :

“Every assessee is also required to maintain a daily account of important raw materials in Form IV (Annexure II) and also to submit a quarterly return in form RT5 (Annexure III) under Rule 55 of Central Excise Rules, 1944. One or two important raw materials, which have been prescribed for most of the excisable goods under Self Removal Procedure, are shown in Annexure IV. The assessee may maintain daily account and submit quarterly RT5 return only in respect of these specified raw materials.”

In Annexure IV are to be found Items 13 and 14 respectively in these terms :

“13. Milk powder but excluding such powder specially prepared for feeding of infants”

“14. Condensed milk whether sweetened or not.”

In column 4, under the heading “names of important raw materials” against item no. 13 is mentioned “whole fresh milk/skimmed milk as the case may be” and against item 14 are found the words “fresh milk/and sugar”. It would be noticed that the description in Items 13 and 14 of Annexure IV is identical to that of items 12 and 13 in the list of excluded items from the Exemption Notification. Yet in item milk powder in Annexure IV as against the names of important raw materials, both “whole fresh milk” and “skimmed milk” are mentioned. But as against condensed milk only “fresh milk” is mentioned. Such a handling of the description of the milk products and preparations does indicate that the Central Government when it mentioned condensed milk in item 13 of the notification dated the 1st March, 1970 it meant to exclude from exemption only condensed milk of full cream milk and not the condensed skimmed milk prepared from skimmed milk. The milk preparation condensed skimmed milk prepared from skimmed milk fell within the Exemption Notification and not within excluded item 13.

A Some support, although a feeble one, can be lent to the above view with reference to Rule 42 of The Prevention of Food Adulteration Rules, 1955. In clause (B) of the said Rules are mentioned the forms of label to be put on condensed milk and the four types of labels are :

(1) "Condensed Full Cream Milk (unsweetened)

B (2) Condensed Full Cream Milk (Sweetened)

(3) Condensed Machine-Skimmed Milk or Condensed Skimmed Milk (unsweetened)

(4) Condensed Machine-Skimmed Milk or Condensed Skimmed Milk (sweetened)"

C In Item 13 of the notification when the Government added the words "whether sweetened or not" it did mean to classify the condensed milk of sweetened or unsweetened variety but did not intend to include in item 13 condensed skimmed milk whether sweetened or unsweetened.

D Learned counsel for the respondents pointed out that the petitioner had obtained a licence for manufacture of condensed milk only under the Excise Act. It did not obtain a licence for manufacture of condensed skimmed milk. Counsel, therefore, submitted that for the purpose of the levy of the excise duty both would be on the same footing. Learned counsel for the appellant submitted in reply that if excise duty was not leviable on condensed skimmed milk then licence was required for its manufacture. The position of law seems to be this. Under section 6 of the Excise Act no person can engage in the production or manufacture of any specified goods included in the First Schedule of the Act except under the authority and in accordance with the terms and conditions of a licence granted under the Act. It will have been seen, therefore, that since skimmed milk or condensed skimmed milk will be a milk preparation within the meaning of item 1B of the First Schedule, a licence to manufacture such milk would be required. If any goods specified in the First Schedule are exempted from the levy of excise duty by the Central Government in exercise of their power under Rule 8(1) of the Central Excise Rules that cannot affect the provision of taking licence for the manufacture of the said goods. But in this case we are not concerned to find out whether the petitioner was manufacturing condensed skimmed milk without a licence and if so, whether it was committing any offence. But even assuming that the petitioner had a manufacturing licence under section 6 of the Act only for manufacture of condensed milk that by itself will not take condensed skimmed milk out of the Exemption Notification and include it in the excluded item 13. For the purpose of levy of excise duty, therefore, condensed skimmed milk remains included in the Exemption Notification.

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H Learned counsel also drew our attention to the form of price list of the petitioner showing separate prices for "Condensed milk (full

cream)" and "Condensed milk (Skimmed)". That again is of no help for the determination of the point at issue. Unless and until skimmed milk is included in item 13 of the Exemption Notification of the 1st March, 1970 it remains an item of goods exempted from levy of excise duty.

A.

For the reasons stated above we allow this appeal, set aside the judgment and order of the High Court and direct the respondents not to enforce their demand of excise duty made in the two notices dated 4-8-1971 and 7-8-1971. In the circumstances we shall make no order as to costs.

B.

V.P.S.

*Appeal allowed.*