



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.872 OF 1994

1. Sanjay Kumar Agarwal
The company liquidator of Biotor
Industries Limited (under liquidation
having his office at Martin Burn House,
2nd Floor, Room No.243,
1, R N Mukherjee Road,
Kolkatta-700001.

2. Mr. Vithaldas G Udeshi
Sett Minat, 13th floor, Peddar Road,
Bombay 400026.

... Petitioners

Versus

1. Union of India
through the Under Secretary
Government of India,
Ministry of Commerce, Udyog Bhavan,
New Delhi 110011.

2. The Joint Director General of Foreign
Trade
New CGO Building, New Marine Lines,
Churchgate, Bombay 400020.

3. Agricultural Marketing Adviser
to the Government of India,
Directorate of Marketing & Inspection,
Ministry of Food and Agriculture,
having its office at Nirman Bhavan,
Department of Rural Development,
Room No.527, New Delhi.

... Respondents

**Mr Gouresh Mogre a/w Ms Tripty Kapadia i/by Joy Legal
Consultants , for Petitioners.**

**Dr G R Sharma a/w Mr D P Singh and Mr Vikas Salgia , for
Respondent No.1 and 2.**

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 10 June 2025

PRONOUNCED ON : 12 June 2025

JUDGMENT (Per Jitendra Jain, J.):

1. This Petition is filed under Article 226 of the Constitution of India challenging the order dated 29 October 1993 passed by the Respondent No.2 whereby the Petitioner's application, for the period 3 July 1989 to 7 May 1991, for refund of Cash Compensatory Scheme (CCS) has been rejected primarily on the ground that 'Castor Oil First Special Grade' cannot be equated as 'Castor Oil Medicinal' for grant of benefit of CCS.

Brief facts :-

2. In 1964, the Ministry of Food and Agricultural, Government of India issued a Circular for the purpose of grading Castor Oil as 'Medicinal'. The grading was based upon the test to be conducted, which was known as 'Carbon Disulphide Test'. In 1966, Cash Compensatory Support Scheme was introduced to incentivize the exports from India. As per the said Scheme, the exporter would be entitled to certain cash compensatory amount on the export of the relevant goods. The said cash assistance for the present purpose was at the rate of 5% of FOB. This rate was

prescribed by the Circular dated 31 March 1989 issued by the Government of India, Ministry of Commerce. The relevant entry 97 read as 'Castor Oil Medicinal'. The said Circular further stated that the rates prescribed for cash compensatory would be applicable from 1 April 1989 to 31 March 1992.

3. On 23 June 1989, Government of India, Ministry of Agricultural superseded its Circular dated 3 October 1964 which provided for the test to be conducted. As per 23 June 1989, the test was changed to 'Thin-Layer Chromatographic Test' (TLC) for identification of Castor Oil of Medicinal grade. The Petitioner conducted the new test i.e. TLC test. However, same good i.e. 'Castor Oil Medicinal' was graded as 'Castor Oil First Special' after undergoing new test although the Petitioner had protested against the introduction of the new test.

4. On 8 May 1991, the respondent issued Circular whereby it clarified that 'Castor Oil First Special' would be eligible for cash compensatory support. Based on this Circular, the Petitioner was denied the benefit of cash compensatory support scheme for the period 22 June 1989 to 8 May 1991.

5. It is on the above backdrop that the present Petition came to be filed, challenging the denial of cash compensatory support scheme to the Petitioner for the period 22 June 1989 to 8 May 1991.

6. Mr Mogre, learned counsel for the Petitioner submitted that on identical issue the Co-ordinate Bench of this Court in the Petitioner's own case while dealing with the refund of duty drawback has held that 'Castor Oil First Special' qualifies as 'Castor Oil Medicinal' for the purpose of duty drawback. He submitted that the said decision squarely covers the controversy raised in the present Petition and therefore the Respondents be directed to refund the cash compensatory amount as prayed for.

7. Mr Sharma, learned counsel for the Respondent opposed the petition and submitted that the decision of the Co-ordinate Bench in Writ Petition No. 871 of 1994 dealt with duty drawback scheme whereas the present Petition deals with Cash Compensatory Support Scheme. He submitted that post the introduction of new Circular laying down new tests, the Petitioner is not entitled to the said benefit for the period under consideration. He also submitted that Petitioner has not challenged rejection order. Therefore, he submitted that the Petition be dismissed.

8. We have heard learned counsel for the Petitioner and Respondents and with their assistance have perused documents brought to our notice.

9. The short issue which arises for our consideration is whether the goods 'Castor Oil Medicinal' is different than the 'Castor Oil First Special' post of the introduction of the new test i.e. TLC. This issue arose before the Co-ordinate Bench of

this Court in the case of this very Petitioner in Writ Petition No.871 of 1994. Though Writ Petition No. 871 of 1994 was in regard to duty drawback rules, the controversy which was posed for consideration of the Co-ordinate Bench was identical to the question raised in the present Writ Petition before us.

10. Writ Petition No.871 of 1994 was disposed of vide order dated 18 September 2009 and 5 February 2010. The relevant observations of the Co-ordinate Bench relevant for the purpose of the present order is paragraph 20 and 21 which reads as under:-

20. As noted earlier by virtue of Rule 3 of the Drawback Rules, it is open to the Government to fix the rates of drawback duty. In so far as the Petitioners are concerned the Government by their communication dated 6th December, 1989 in respect of Castor Oil medicinal and/or Castor Oil First Grade had fixed rate for the period 1-6-1989 to 31-5-1990. By a further communication of 6-11-1990 the communication of 6-12-1989 was amended by substituting the description by "Castor Oil medicinal". Thus Castor Oil First Special Grade was excluded. The question that we are called upon to consider is whether it was open to respondents by subsequent communication of 6-11-1990 to amend the communication on 6-12-1989 for the period 1-6-1989 to 31-5-1990. In our opinion the Petitioners had already exported Castor Oil First Grade under the mark Castor Oil First Special Grade as they were doing earlier. It is only that the same oil then was being described as Castor Oil medicinal, pursuant to the test which was earlier being done in terms of Circular of 3rd October, 1964. That was by hot extraction or by extraction with solvents as has been described earlier. Such Castor Oil was always treated by the Government as Castor Oil medicinal. It is only pursuant to the Circular dated 22/23-6-1989 that the Thin-layer Chromatographic Test was applied for identification of Cold draw Castor Oil of Medicinal Grade. The communication of 6-12-1989 covered

the period 1-6-1989 to 31-5-1990. In other words upto 22/23-6-1989 the Castor Oil undergoing the earlier test was still treated as Castor Oil medicinal. It is only subsequent to 22/23-6-1989 it had to undergo the Thin-layer Chromatographic Test. The Petitioners had been exporting Castor Oil First Grade and the Government in fact recognised the same by fixing the rates by letter of 6th December, 1989. Under these circumstances could the Government have withdrawn the same by communication of 6-11-1990.

21. We may make reference to some of the judgments referred to at the Bar. In Mazda International (P) Ltd. vs. Union of India, 1995 (77) E.L.T. 526 (Bom), the Government of India removed Gripe water from the entitlement of drawback benefit with retrospective effect. The submission before the Court was that the Authority exercising subordinate legislation could not have withdrawn the benefits with retrospective effect. A learned Division Bench of this Court accepted the said contention as unless there be a power to make subordinate legislation with retrospective effect it is not open to an Authority to give retrospective effect to a Notification. This was followed by another Division Bench in Gandhi Sons & Ors., vs. Union of India, 2002 (81) ECC 261 (Bom.) and subsequently reiterated by another judgment in Arviva Industries (I) Ltd. vs. Union of India, 2004 (167) E.L.T. 135 (Bom.). Based on these Authorities it will be clear that once the rates had been fixed in respect of the goods described in the communication it could not have been open to the respondents to retrospectively amend the benefit given. Even otherwise from the reply filed on behalf of the respondents it would be clear that this was done as Castor Oil First Grade would not fall under Entry 12 namely Drugs and Pharmaceutical products. This was only because the change and nature of the test. Upto 22/23-6-1989 under the test in force the same Castor Oil could have been exported and was being exported as Castor Oil medicinal. Letter of 6th December, 1989 is recognition of this and apart from that it can also be traced to the Governmental powers under Rule 15 of the Rules to avoid hardships. Under these circumstances, in our opinion, the subsequent communication for all these reasons be would without authority of law and consequently no reliance can be placed on the letter of 6th

November, 1990 amending the letter by letter dated 6-12-1989 with retrospective effect.

11. Post the above order, the Coordinate Bench reviewed its order on 5 February 2010 and directed revenue to grant refund of duty drawback.

12. The Co-ordinate bench in Writ Petition No.871 of 1994 vide order dated 18 September 2009 and 5 February 2010 in Writ Petition No.3 of 2010 directed the Revenue authority to refund the duty drawback for the period 1 June 1989 to 31 May 1990 by rejecting the contention of the revenue authorities that the goods 'Castor Oil Medicinal' is different than 'Castor Oil First Special'.

13. In our view, although the order in Writ Petition No. 871 of 1994 dealt with duty drawback rules, but since the controversy is identical to the one which is raised before us, the ratio of the said decision squarely applies to the facts of the present case and, therefore, respondents are not justified in rejecting the application of the Petitioner denying the benefit of Cash Compensatory Support Scheme merely on the ground that 'Castor Oil First Special' is not the same as 'Castor Oil Medicinal' after the introduction of the new test i.e. the TLC test.

14. There is also no dispute that the contracts under which the exports were made by the Petitioner for the period under consideration were executed prior to June 1989. The Petitioner is justified in relying upon the following decisions

(i) *Union of India Vs Cosmique International*¹, (ii) *Vibgyor Textile International vs Union of India*², (iii) *Parmanand Industries Vs Union of India*³ and (iv) *Old Village Industries Ltd. Vs Union of India*⁴ wherein the Co-ordinate Bench of this Court and other high courts have taken the view that contracts executed prior to the cutoff day would not be governed by the subsequent change in the scheme granting the benefit. In our view, the ratio of this decision squarely applies to the facts of the present case, since in the present case also, there is no dispute that the exports made for the period under consideration were in respect of contracts executed prior to 23 June 1989 Therefore, even on this count, the rejection of the benefit of cash compensatory support scheme by the respondents is not justified. This view is also supported by the Circular dated 8 May 1991 which lays emphasis on the date of execution of the contracts and not the date of exports.

15. We do not agree with learned counsel for respondents that the Petitioner has not challenged the order dated 29 October 1993. In the prayer clause (c), there is a specific challenge to the same and therefore the said submission is required to be rejected.

16. It is also important to note that merely because the test required is changed would not alter the nature of the goods.

¹ 1994 (73) ELT 526 (Del.)

² 1989 (39) ELT 535 (Bom.)

³ 1993 (68) ELT 726 (Bom.)

⁴ 1994 (73) ELT 289 (Del.)

Furthermore, from 8 May 1991, the benefit of the CCS scheme has been granted to the goods 'Castor Oil First Special'. If that be so, then we fail to understand as to how the said benefit can be denied for the period 22 June 1989 to 8 May 1991 merely on the ground of change in the test. Therefore looked from any angle, the goods 'Castor Oil Medicinal' and 'Castor Oil First Special' would remain the same although there was a change in the test by Circular dated 23 of June 1989.

17. The Petitioner has also obtained Technical Report by Expert Authorities on whether the 'Castor Oil Medicinal' is different product post the TLC test. The said technical reports given by the experts confirm that the product 'Castor Oil Medicinal' remains the same even after change of test from 'Carbon Disulphide test' to TLC test. These technical reports have not been controverted by the Respondents.

18. The Circular dated 31 March 1989 by which rate of 5% of FOB as CCS was granted applied for the period 1 April 1989 to March 1992 and as per the said Circular, the benefit of CCS was granted to the Petitioner on export of goods on the premise that the same constitutes of 'Castor Oil Medicinal'. In our view, since the said Circular applied for the period 1989 to 1992, the Respondents were not justified in denying the benefit of CCS for the period 22 June 1989 to 8 May 1991 merely on the basis of change of test to be conducted.

19. The Circular dated 8 May 1991 whereby the benefit was granted to Castor Oil First Special indicates that the goods Castor Oil Medicinal and Castor Oil First Special are identical. This, we say so because of the entry post 8 May 1991 which reads as under:

"97. Castor Oil Medicinal/First Special-5%"

20. In view of the above, we pass the following order:

- (a) Order dated 29 October 1993 (Exhibit-Y) is quashed and set aside.
- (b) The Respondents are directed to pay to the Petitioner the Cash assistance of Rs.4,33,75,866/- within the period of 8 weeks from the date of uploading of the present order. If this is not done, then this amount shall carry interest at 6 per cent per annum, commencing from 1.9.2025 until effective payment.
- (c) The Petition is allowed in the above terms.
- (d) No order as to costs.

(Jitendra Jain, J)

(M.S. Sonak, J)