CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10094 of 2013-DB

[Arising out of Order-in-Original/Appeal No 246-2012-AHD-II-CE-AK-COMMR-A--AHD dated 11.10.2012 passed by Commissioner of Central Excise-AHMEDABAD-II]

Bajaj Herbals P. Limited **.... Appellant**
444, Ashwamegh Estate, Opp. M.N. Desai Petrol Pump,
Village-Changodar, Taluka-Sanand, AHMEDABAD
GUJARAT-382210

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii **.... Respondent**
Custom House, First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat -380009

APPEARANCE :

Shri R.R. Dave, Consultant for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 14.02.2024
DATE OF DECISION: 13.06.2024

FINAL ORDER NO. 11312/2024

RAMESH NAIR :

The issue involved in the present case is whether the appellant's product 'Himshakti Cool Hair Oil' is classifiable under Chapter heading 33059019 as Hair Oil or under 30049011 as claimed by the assessee as 'Ayurvedic Medicament'.

2. As per the impugned order, the appellant's claim on the classification of Himshakti Cool Hair Oil as Ayurvedic Medicament is rejected on the ground of test report of Chemical Examiner dated 05.08.2011 in which it is reported that product Himshakti Cool Hair Oil is not an Ayurvedic Medicament in accordance with the definition mentioned in the Drugs and Cosmetic Act, 1940.

3. Shri R.R. Dave, learned Consultant appearing on behalf of the appellant submits that the product Himshakti Cool Hair Oil is admittedly manufactured out of the ingredients which are Ayurvedic Medicament therefore, the goods is Ayurvedic Medicament. He also invited out attention to the test of CRCL, Delhi dated 16.01.2012 wherein it has been pointed out that the added ingredients, declared by the manufacturer could not be tested in this laboratory. It is his submission that the entire basis of classifying the goods as Ayurvedic Product is based on the ingredients used and the same is Ayurvedic Product. In the absence of testing of ingredients, no conclusion can be drawn that the product is an Ayurvedic Medicament or otherwise. Therefore, the entire basis for classifying the product other than an Ayurvedic Medicament is not correct and legal. He submits that on the basis of ingredients which are Ayurvedic being used in the manufacture of product is Ayurvedic Medicament. In support, he relied upon following judgments:-

(a) Pepsico Holdings Pvt. Limited – 2019 (25) GSTL 271 (Tri. Mum.)

(b) Warner Hindustan Limited – (1999) SCC 762

(c) Acme Micronised Minerals vs. CC Mundra – Final Order No. A/10044/2024 dated 03.01.2024

(d) M/s. Sunrise Traders & Ors vs. CC Mundra – Final Order No. A/10013-10062/2022 dated 11.01.2022.

4. Shri Ajay Kumar Samota, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. On careful consideration of the submissions made by both the sides and perusal of record, we find that we do agree with the submissions of learned Consultant that to arrive at conclusion that the product is Ayurvedic Medicament or otherwise, it is necessary to establish that the ingredients used in the manufacture of product in question are Ayurvedic or otherwise. From the test report of CRCL, Delhi it is clear that the ingredients were not tested. In this position to jump the conclusion whether the product is Ayurvedic Medicament or otherwise is pre-mature. Needless to say that other than the use of ingredients there is various other aspects as well as

presentation of the goods in the trade parlance use of goods whether the same is therapeutic value or otherwise whether the appellant is given license to the manufacturer of the product as Ayurvedic Medicament etc. needs to be verified. Therefore, we are of the view that matter needs to be reconsidered keeping in mind the above observations. The Revenue is at liberty to get the product retested to ascertain whether the ingredients used therein are Ayurvedic Medicament or otherwise. Needless to say that if the testing/retesting of the final product as well as ingredients is not possible then the matter can be decided based on the other material on record.

6. As per our above observations, the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 13.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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