

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 22853 of 2014

(Arising out of Order-in-Appeal No. 82 to 86/2014-C.E dated
23.05.2014 passed by the Commissioner of Central Excise (Appeals),
Cochin.)

**M/s. Warriar's Hospital &
Panchakarma Centre,**

Puthiyavila P.O.,
Velanchira,
Kayamkulam – 690 531.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Customs,**

P.B. No.13, I.C.E. Bhavan,
Press Club Road,
Thiruvananthapuram – 695 001.

Respondent(s)

With

- (i). Central Excise Appeal No. 22854 of 2014 (M/s.
Warriers Hospital and Panchakarma Centre**
- (ii). Central Excise Appeal No. 22855 of 2014 (M/s.
Warriers Hospital and Panchakarma Centre**
- (iii). Central Excise Appeal No. 22856 of 2014 (M/s.
Warriers Hospital and Panchakarma Centre**
- (iv). Central Excise Appeal No. 22857 of 2014 (M/s.
Warriers Hospital and Panchakarma Centre**

(Arising out of Order-in-Appeal No. 82 to 86/2014-C.E dated
23.05.2014 passed by the Commissioner of Central Excise (Appeals),
Cochin.)

APPEARANCE:

Mr. G. Shivadass, Senior Advocate with Ms. Shradha Rajgiri, Advocate
for the Appellant

Mr. M.A. Jithendra, Assistant Commissioner (AR), for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 21401 - 21405 /2025

DATE OF HEARING: 13.03.2025

DATE OF DECISION: 11.09.2025

DR. D.M. MISRA

These appeals are filed against Order-in-Appeal No.82 to 86/2014-CE dated 23.05.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of excisable goods for which registered with the Central Excise Department. They are engaged in the manufacture and sale of variety of products including "Dhatri Brand Fairness Face Pack" (DFFP for short). During the scrutiny of their returns filed with the Department, it is noticed that they have classified the said product DFFP under Chapter sub heading 30049011 of Central Excise Tariff Act, 1985 (CETA) as an ayurvedic medicament and paid applicable duties on the transaction value as per Section 4 of the Central Excise Act, 1944, during the relevant period. Alleging that the product manufactured by the appellant is classifiable under Chapter sub-heading 33049990 of CETA, 1985 and chargeable to duty under Section 4A of the Central Excise Act, 1944, show-cause notices were issued from time to time demanding differential duty with interest and proposing penalties under the provisions of Central Excise Act, 1944. All the demands were confirmed with interest and penalty. Aggrieved by the said order, the appellant preferred appeals before the learned Commissioner(Appeals) who in turn rejected their appeals. Hence, the present appeals.

3. At the outset, the learned senior advocate for the appellant has submitted that the appellant are registered for manufacture of ayurvedic products such as massage oils, facial creams, hair oil etc. In the present case, the appellant has manufactured 'DFFP' and classified the same under Chapter sub-heading 30049011 of CETA, 1985. He has submitted that the said

product is prepared by the appellant through "Varnakaralepavidhi" process which assists in treating skin diseases. This product is an ayurvedic medicament manufactured using various ayurvedic ingredients which are thoroughly washed, dried and finally powdered and packed. The product is a medicament which penetrates deep into the skin and help to cure the skin. The list of ingredients were used in the preparation of the said products is as per the Ayurvedic Book "Cakradatta". Further, he has submitted that the appellant has been manufacturing the said product since 2004 and granted manufacturing licence by the Deputy Drugs Controller under the Drugs and Cosmetic Act, 1940. The product has been certified as an Ayurvedic product by the Drug Controller under the Drugs and Cosmetics Act, 1940 and therefore would fall under the scope of Chapter sub-heading 30049011 of the CETA, 1985. It is their contention that the drug controlling authorities are competent to examine and certify as to whether a particular product is to be considered as an ayurvedic medicament or an allopathic medicament. He has submitted that once it is certified by the drug controlling authorities as an ayurvedic drug and duly mentioned in the authorised text books listed under the Schedule of Drugs and Cosmetics Act, 1940, it cannot be questioned by the Central Excise Department. In support, they referred to the judgments in the cases of *Naturalle Health Products Pvt. Ltd. Vs. CCE* [2003(158) ELT 257] and *CCE Vs. Sharma Chemical Works* [2003(154) ELT 328 (SC)].

4. The learned senior advocate has further submitted that twin tests laid down by the Tribunal in the case of *Richardson Hindustan Ltd. Vs. CCE* [1988(35) ELT 424], later affirmed by the Hon'ble Supreme Court reported as *CCE, Hyderabad Vs. Richardson Hindustan Ltd.* [(2004) 9 SCC 156]. The twin tests are"

- i. Product should be considered as an ayurvedic medicine in common parlance;

- ii. Product should have been created with all its ingredients as mentioned in Authoritative Books on Ayurvedic Medicines.

The said twin tests are later adopted by the Board in its Circular No.25/1991 dated 03.10.1991.

5. It is their contention that the licence received from the Drug Controller and in common parlance, the product is recognised and considered as an ayurvedic medicine and used to treat skin conditions. All the ingredients are mentioned in the Authoritative Text Books such as Ashtanga Hridayam and Sahasrayogam and therefore, the said product cannot be classified under Chapter heading 3304. In support, they have referred to the following case laws:-

- i. BPL Pharmaceuticals Ltd. Vs. CCE [1995(77) ELT 485 (SC)]
- ii. CCE, Pondicherry Vs. Vale Exports (P) Ltd. [2018(359) ELT 211 (Tri. Chennai)]
- iii. Puma Ayurvedic Herbal (P) Ltd. Vs. CCE, Nagpur [(2006) 3 SCC 266]

6. It is their contention that the burden for correct classification of the goods rests on the Revenue and in the present case, the Revenue has not provided any evidence to show that the product is classifiable under Chapter 33. They have further submitted that the product in question cannot be classified under Chapter heading 3304 of CETA as to fall under the said Tariff heading, it must satisfy the conditions: (i) it must be suitable for beauty or make up preparation and (ii) the packaging along with labels, literature and other indications must indicate that it is a 'cosmetic' or toilet use. Further, they have submitted that the product is neither marketed as a cosmetic nor the packaging of the same specifies it as cosmetic product. Further, the curative effects and the directions to use as specified in the packaging of the product indicates that it is a medicament rather than a cosmetic product, which is only suitable for beautification. Further, the senior advocate has

submitted that that demand of interest and imposition of penalty on the appellant is unwarranted, which is bad in law.

7. *Per contra*, the learned AR for the Revenue has submitted that the Department has classified the product 'Dhatri Brand Fairness Face Pack' (DFFP) under Chapter Heading 3304. It is his contention that the product is marketed and sold as a fairness face pack for skin beautification, which clearly falls under the definition of Cosmetics under Chapter Heading 3304. The product is available over the counter without any prescription indicating it is cosmetic nature. The learned AR for the Revenue has referred to the judgment of the Hon'ble Supreme Court in the case of UoI Vs. Garware Nylons Ltd. [1996 (87) ELT 12 (SC)] wherein it is held that tariff expression should be construed in the sense understood by those dealing in such goods. Referring to the finding of the adjudicating authority, he has submitted that Chapter Note 1(d) to Chapter 30 excludes preparations of Chapter 33 (cosmetics) even if they have therapeutic or prophylactic properties. It is submitted that the appellant could not establish that the product is primarily used for therapeutic purposes and is prescribed by medical practitioners. In support of their argument that the product is classifiable under Chapter heading 3304, the learned AR has referred to the following judgments:-

- i. Shree Baidyanath Ayurveda Bhawan Ltd. Vs. CCE, Nagpur [1996(83) ELT 492 (SC)]
- ii. Puma Ayurvedic Herbal Pvt. Ltd. Vs. CCE, Nagpur [2006(196) ELT 3 (SC)]
- iii. CCE Vs. Sharma Chemical Works [2003(154) ELT 328 (SC)]

8. Heard both sides and perused the records.

9. The short issue involved in the present appeals is whether the 'Dhatri Brand Fairness Face Pack' manufactured by the appellant is classifiable under Chapter sub heading 30049011 as

ayurvedic medicament or under Chapter sub-heading 33049990 of CETA, 1985, during the relevant period.

10. Undisputed facts of the case are that appellants are discharging duty under Chapter sub-heading 30049011 on the transaction value whereas Department proposed to recover differential duty considering the classification under Chapter sub-heading 33049990, subject to MRP assessment under Section 4A of the said Act. Before analysing the rival claims, it is relevant to reproduce the competing entries, which are as follows:-

Chapter sub-heading 30049011

Tariff item (1)	Description (2)	Unit (3)	Rate of duty (4)
300490	-Other: -- Ayurvedic, Unani, Homoeopathic, Siddha or Bio-chemic systems medicaments, put up for retail sale:		
30049011	--- Of Ayurvedic system	Kg.	6%

Chapter sub-heading 33049990

Tariff item (1)	Description (2)	Unit (3)	Rate of duty (4)
3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; mani-cure or pedicure preparations		
33049990	--- Other	Kg.	12%

The relevant Chapter Notes are as below:-

Chapter Notes 1(d) and 1(e)

I(d) aqueous distillates or aqueous solutions of essential oil, suitable for medicinal uses (heading 3301);

I(e) preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties;

11. The Revenue’s principal argument is that the product in question, though have some therapeutic or prophylactic

properties, it is being a secondary benefit and the principal object of the product is beautification and skin care, which satisfies the definition of cosmetics; hence, classifiable under Chapter 3304.

12. The relevant circulars on the classification of the ayurvedic medicine relevant for the present purpose are as below:-

Ayurvedic medicine — Classification of [Chapter 30]

Circular No. 25/91, dated 3-10-1991

[From F. No. 103/10/90-CX.3]

Government of India
Central Board of Excise & Customs
New Delhi

Subject : Central Excise - Chapter 30 - Classification of the products claimed as Ayurvedic medicine under the C.E.T.A., 1985 - Classification regarding.

Representations have been received from manufacturers of Ayurvedic preparations that they have been facing problems in different Central Excise Collectorates in the matter of identification/classification of such products. The doubts relate to the question as to whether the products claimed to be Ayurvedic medicine, are in fact so, and whether those would merit classification under Sub-heading No.3003.30 of the Schedule to the Central Excise Tariff Act, 1985.

2. According to the guidelines already in vogue, each medicament used in the various systems of treatments eg. Ayurvedic, Unani and Siddha, has to be examined on merits and, in specific cases of doubts, the Collectors are required to make a reference to the Board, who take up the matter with the Drugs Controller of India.

3. The Government have further examined the matter in the light of parameters prescribed by the Tribunal in their Order No. 116/88-C, dated 10-2-1988 in the case of *M/s. Richardson Hindustan Ltd. v. C.C.E., Hyderabad*. The Tribunal held that a preparation would merit classification as an Ayurvedic medicine, if in the common parlance, it is known as an Ayurvedic medicine and all its ingredients are mentioned in the authoritative book(s) on Ayurvedic medicines. It has also been observed that the aforesaid two tests have been upheld by Hon'ble Supreme Court in the case of *Civil Appeal No.2127 of 1988-C.C.E., Hyderabad v. M/s. Richardson Hindustan Ltd.* - Supreme Court's Order dated 10-1-1989.

4. The Government have accepted the above referred two tests for determining the classification of the products claimed to be as Ayurvedic medicine (excluding herbal or ayurvedic cosmetic) and these may accordingly, be kept in view while deciding similar cases.

5. The above clarification may be brought to the notice of the lower field formations and the trade interests may also be suitably advised.

6. All pending assessments of the type indicated above, may be finalised on the above basis.

Ayurvedic medicines — Classification [Chapter 33]

For subsequent modifications/developments, see
**Circular Nos. 360/76/97-CX, dated 3-12-1997 &
 379/12/98-CX, dated 16-3-1998.>Circular No.
 333/49/97-CX, dated 10-9-1997
 [From F. No. 102/6/97-CX.3]**

Government of India
 Ministry of Finance (Department of Revenue)
 Central Board of Excise & Customs, New Delhi

Subject : Classification of Products under the Central Excise Tariff Act, 1985, which are claimed by the manufacturers as Ayurvedic medicines - Regarding.

There have been disputes arising in the classification of products under the Central Excise Tariff Act, 1985, which are being claimed by the manufacturers as Ayurvedic medicines, and as per the contention of the department the same were cosmetics/toilet requisites falling under Chapter 33 of the Central Excise Tariff Act, 1985.

2. There are a number of judgments on the issue which have laid down certain criteria for the classification of a product as an ayurvedic medicine or as a cosmetic/toilet requisite.

3. The Hon'ble Supreme Court of India in its judgment in the case of *Shri Baidyanath Ayurved Bhavan Limited v. CCE, Nagpur* [[1996 \(83\) E.L.T. 492](#) (S.C.)] has stated that "The Tribunal rightly points out that in interpreting statutes like the Excise Act the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say, the meaning attached to them by those using the product. It is this reason that the Tribunal came to the conclusion that scientific and technical meanings would not advance the case of the appellants if the same runs counter to how the product is understood in popular parlance. That is why the Tribunal observed in Paragraph 86 of the judgment as under :

"So certificates and affidavits given by the Vaidyas do not advance the case of *Shri Baidyanath Ayurved Bhavan Limited* in the absence of any evidence on record to show and prove that the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a toilet requisite."

It is this line of reasoning with which we are in agreement. The Tribunal rejected the claim of the appellant holding that ordinarily a medicine is prescribed by a Medical Practitioner and it is used for a limited time and not everyday unless it is so prescribed to deal with a specific disease like diabetes. We are,

therefore, of the opinion that the Tribunal applied the correct principles in concluding that the product in question was not a medicinal preparation (“Ayurvedic”) and, therefore, the appellant was not entitled to the benefit of the exemption notification.”

4. The Hon’ble Tribunal in the case of *M/s. Alpine Industries v. CCE, Delhi* [[1997 \(92\) E.L.T. 53](#) (Tribunal)] have stated that “the fact of manufacture of an item under licence under the Drugs & Cosmetics Act is no guarantee that it is a medicament.”

5. The Hon’ble Tribunal in the case of *CCE, Mumbai v. M/s. Muller & Phipps Ltd.* have stated, while holding that Johnson Prickly Heat Powder was a cosmetic classifiable under Chapter 33, that,

“Product is available in the market, does not require any prescription of a Doctor and the people generally use it to prevent prickly heat and therefore in the circumstances the curative and prophylactic uses are subsidiary.”

6. Even in the case of *M/s. Richardson Hindustan Limited*, the Hon’ble CEGAT vide judgment dated 10-2-1988 [[1988 \(35\) E.L.T. 424](#) (Tribunal)] has stated while classifying Vicks Vaporub as an ayurvedic medicine;

“that there is no definition of ayurvedic medicaments in the Central Excises and Salt Act or in the Central Excise Tariff and although ayurvedic medicines have been defined in Section 3 (a) of the Drugs and Cosmetics Act the same cannot be applied for the purpose of classification of a product for central excise duty under the Central Excises & Salt Act and the Central Excise Tariff Act, in view of judicial pronouncements indicated earlier. 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 the popular sense i.e., the meaning as understood by the people conversant therewith.”

7. Chapter Note 2 to 33 states that “Headings 33.03 to 33.07 apply *inter alia*. to products, whether or not mixed, suitable for use as goods of these headings and put up in packings with labels, literature and other indication that they are for use as cosmetics or other toilet preparations or put up in a form clearly specialised for such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents or are held out as having subsidiary curative or prophylactic value.”

8. Many of the disputes appear to be arising because the manufacturers of the products have a drug licence issued to them by the Drug Control Authorities based upon the presence of certain constituents and certain subsidiary curative and

prophylactic properties. In views of the Chapter Note 2 of Chapter 33, there clearly will exist a category of products which may be granted a drug licence based on certain subsidiary pharmaceutical or antiseptic constituents or having subsidiary curative or prophylactic value which would, however, be classifiable under Chapter 33 despite the drug licence, in view of the Chapter Note mentioned above.

9. It is directed to state that in view of the judgments and facts discussed above it has been decided that all assessments of products claimed to be ayurvedic medicaments under Chapter 30 should be re-examined by the Commissioners of Central Excise whether manufactured under a drug licence or not so as to redetermine their classification under the Central Excise Tariff Act, 1985. For the purpose the following facts may be kept in view :

a. The perception of the product in popular parlance, whether as medicaments or cosmetics/toilet requisite. The advertising, marketing and the manner in which the product is put up may also be taken into consideration.

b. It may be ascertained that the products claimed to be medicaments, should have substantial therapeutic claims which are not subsidiary in nature and the mode of prescription and use should be similar to that of a medicine/drug. It may be noted that medicaments are normally prescribed in doses, for a limited time, and for specific conditions/ailments.

c. The drug licence may be used as a guide for the classification of product but not as the determining factor. The classification of a product under Chapter 30 or Chapter 33 may be done as per the Rules of Interpretation of the Central Excise Tariff Act, 1985 read with Chapter Note 1(d) to Chapter 30 and Chapter Note 2 to Chapter 33 and various judgments mentioned above.

10. This Circular supersedes all previous circulars/instruction issued by the Board regarding classification of any product claimed as Ayurvedic Medicine except in cases where there are specific orders regarding classification of certain products from Courts/Tribunal which are in force. A list of all products claimed as ayurvedic medicines in your commissionerates may be prepared and the classification of these products may be reviewed in the light of the above instructions.

11. You are also requested to send a report on the action taken to the Board by 15th October, 1997 positively.

13. In the show-cause notices issued to the appellant from time to time, it is proposed to classify the product DFFP under Chapter sub-heading 33049990 instead of 30049011 declared by the appellant. No evidence of its use and understanding in

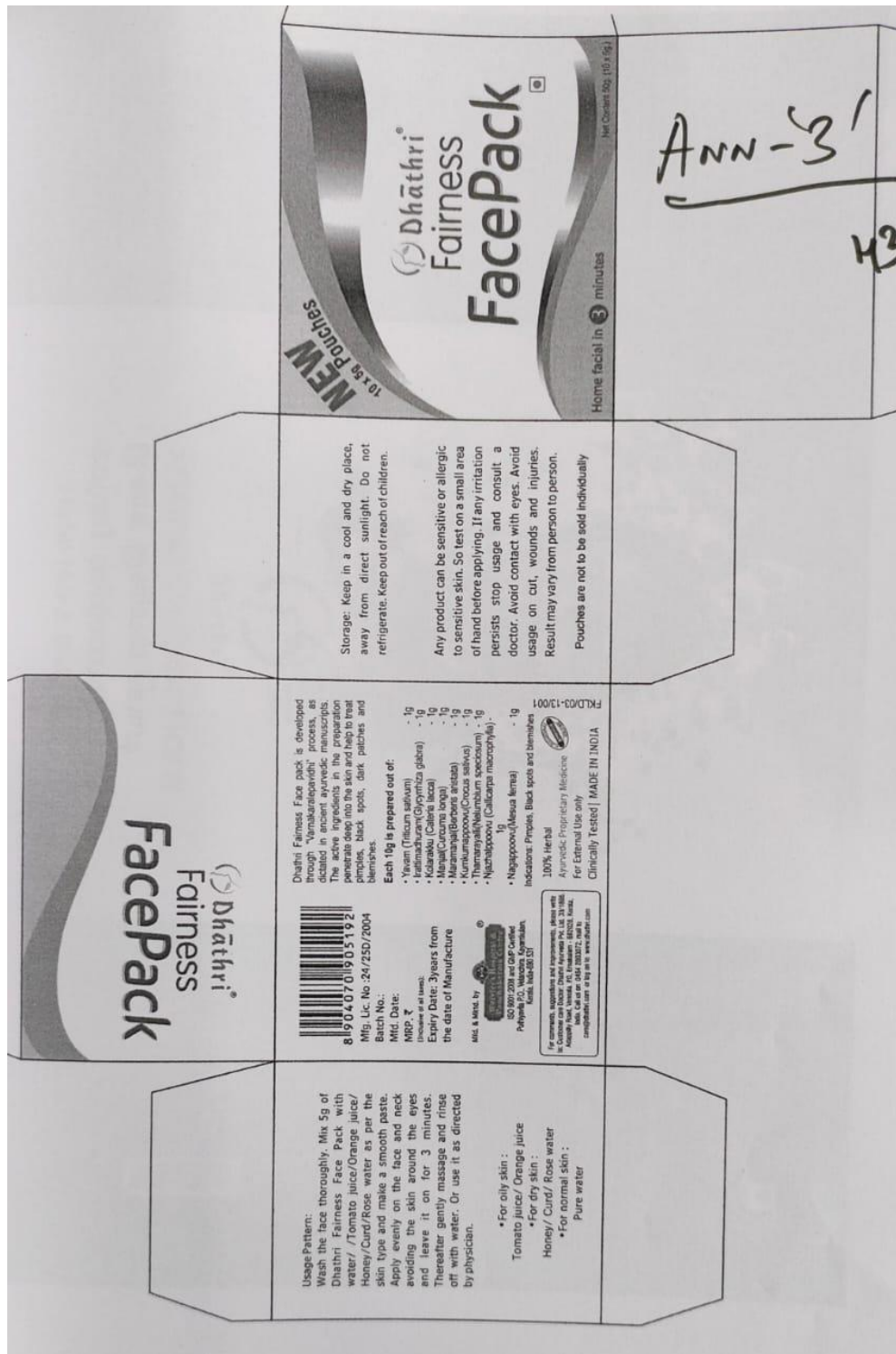
popular sense alleging that the product DFFP be classifiable under Chapter 33 instead of Chapter 30 of CETA, 1982 has been mentioned in the show-cause notices. The authorities below in confirming the differential duty classifying the product under Chapter sub-heading 33049990 observed that the appellant had failed to satisfy the twin tests relevant for determining whether the impugned product is ayurvedic medicament or cosmetics falling under Chapter sub-heading 33049990 of CETA, 1985.

14. Before analysing the said finding, it is essential to understand the product manufactured by the appellant. The DFFP manufactured by the appellant contains the following ingredients:-

INGREDIENTS USED IN THE PRODUCT “DHATRI FAIRNESS FACE PACK”		
English Name	Malayalam Name (as per the product package)	Sanskrit Name (as provided under “Cakradatta”)
Barley	Yavam	Badaram
Turmeric	Manjal	Haridra
Tree Turmeric	Maramanjal	Daruharidra
Safron	Kumkumapoovu	Kumkuma
Lotus Stamens	Thamarayalli	Padmaka
Red Sandalwood	Rekthachandanam	Raktachandana
Priyanju	Njazhalppoovu	Priyangu
Licorice	Irattimadhuram	Maduyasti
Laccifer lacca	Kolarakku	Laksha
Ceylon ironwood	Nagappoovu	Kusumbha

15. It is claimed by the appellant and not disputed by the Revenue that all the ingredients that are used in the manufacture of DFFP are mentioned in the Authoritative Text Books. During the course of hearing, the learned senior advocate for the appellant has submitted copy of the book ‘Cakradatta - A treatise on Principles and Practices of Ayurvedic Medicine by Shri P.V. Sharma’ to buttress their claim that the product in question has been manufactured as per the Authoritative Text Books. Also, it is submitted that the said product is advertised as an ayurvedic medicine being licensed by the Deputy Drug Controller under the Drugs and Cosmetics Act,

1940. A specimen of the packing which displays the Ayurvedic Licence Number, ingredients of the products and its usage, produced during the course of hearing, reproduced as below:-



16. Also, the appellant have enclosed the affidavits of Dr. Sheetal C. Nair and Dr. Sandeep S., stating that the said Doctors have been prescribing the impugned product to patients suffering from Yavana Pediaka (pimples), Mukha Vyangam

(blemishes). Therefore, it is their cumulative argument that they have fulfilled the twin test laid down by the Hon'ble Supreme Court in the case of CCE, Hyderabad Vs. Richardson Hindustan Ltd. (supra), which has been later the basis for issuing the circular for classification of the ayurvedic product and also later endorsed by the Hon'ble Supreme Court in a series of cases including Puma Ayurvedic Herbal (P) Ltd. (supra) and CCE, Chennai -IV vs. Hindustan Lever Limited [(2015) 34 GSTR 497].

17. The classification of a product under ayurvedic medicament or cosmetics has been the issue before the Hon'ble Supreme Court in a series of cases. Discussing the principles laid down in various cases involving different products, the Hon'ble Supreme Court in Puma Ayurvedic Herbal (P) Ltd.'s case, while dealing with a series of products including 'Puma Neem Facial Pack', 'Puma Herbal Facial Pack', 'Puma Herbal remedy for Facial Blemishes' etc. analysing the meaning of medicament and cosmetics, observed as follows:-

18. From the above judgments it follows that the law is settled on the applicability of the twin test for determination of classification of a product. We have already found that the twin test is satisfied in the present case regarding most of the items under consideration.

19. The word 'medicament' is not defined anywhere while the word "cosmetic" is defined in the Drugs and Cosmetics Act, 1940 as under :

"A 'cosmetic' means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic."

20. It will be seen from the above definition of cosmetic that the cosmetic products are meant to improve appearance of a person, that is, they enhance beauty. Whereas a medicinal product or a medicament is meant to treat some medical condition. It may happen that while treating a particular medical problem, after the problem is cured, the appearance of the person concerned may improve. What is to be seen is the primary use of the product. To illustrate, a particular Ayurvedic product may be used for treating baldness. Baldness is a medical problem. By use of the product if a person is able to grow hair on his head, his ailment of baldness is cured and the person's appearance may improve. The product used

for the purpose cannot be described as cosmetic simply because it has ultimately led to improvement in appearance of the person. The primary role of the product was to grow hair on his head and cure his baldness.

21. The extent or the quantity of medicament used in a particular product will also not be a relevant factor. Normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. The medical ingredients are mixed with what is in the trade parlance called fillers, or vehicles in order to make the medicament useful. To illustrate an example of Vicks Vaporub is given in which 98% is said to be paraffine wax, while the medicinal part i.e. Menthol is only 2%. Vicks Vaporub has been held to be medicament by this Court in *CCE v. Richardson Hindustan Ltd.* - [1989 \(42\) E.L.T. A100](#). Therefore, the fact that use of medicinal element in a product was minimal does not detract from it being classified as a medicament.

22. In order to be a medicinal preparation or a medicament it is not necessary that the item must be sold under a doctor's prescription. Similarly availability of the products across the counter in shops is not relevant as it makes no difference either way.

23. The learned counsel for the respondent drew our attention to Note 2 of Chapter 33 of the Central Excise Tariff which is as under :

“Note 2. Heading Nos. 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value.”

24. On the basis of this Note it was argued that even if a product had some curative or prophylactic value, it will still be cosmetic. We cannot accept this argument. The learned counsel has overlooked the use of the word ‘subsidiary’ in the said note from which it follows that a subsidiary curative or prophylactic use will not convert a cosmetic into medicament. We have tried to illustrate this by giving the example of bald man treating his baldness by use of Ayurvedic product. The curative use of the product is primary in that example and not subsidiary. The subsidiary result is improvement in appearance. Therefore, in our view, Note 2 to Chapter 33 does not help the respondent. Rather Note 5 to the said Chapter, makes it clear that the products which fall under Heading 33.04 are primarily beauty or make up preparations. They may incidentally help in protection against skin irritants. They may also help as a skin tonic, yet they are cosmetics because skin protection is subsidiary benefit.

25. In this connection reference may also be made to Note I(d) to Chapter 30 of the Central Excise Tariff. The said Note reads as under :

Note I starts with “This Chapter does not cover”.

- (a)
- (b)
- (c)
- (d) “Preparations of Chapter 33 even if they have therapeutic or prophylactic properties.”

26. Thus preparations falling in Chapter 33 even if they have therapeutic or prophylactic properties will not fall under Chapter 30 which deals with pharmaceutical products. The reasons for this appears to be that even cosmetics may have something to improve skin or other parts of the body where they are used. In that sense they may have some therapeutic value yet they remain cosmetic.

18. The authorities below even though referred to the judgment of the Hon’ble Supreme Court in Puma Ayurvedic Herbal (P) Ltd.’s case, distinguished the same from the present case holding that in the said case before the Supreme Court, the assessee had produced evidences like opinion of the Doctors, Ayurvedic practitioners, from the users of the product in question whereas in the present case, the appellant failed to produce sufficient evidences to establish the fact that it is known in the common parlance as an ayurvedic medicament.

19. We find that the authorities below had erred in discarding the evidences produced by the appellant against the allegation of revision of classification from Chapter sub-heading 30049011 to Chapter sub-heading 33049990. It is a bare allegation in the show-cause notice without mentioning any evidences on the basis of which the Revenue proposed to change the classification. Needless to mention that onus lies on the Revenue to lead the evidences to arrive at the correct classification of the product as held by Hon’ble Supreme Court in a series of cases including CCE Vs. Hindustan Lever Limited (supra), wherein their Lordships held as under:-

18. Another more important factor which needs to be stated at this stage is that though the burden was on the Department, it did

not lead any evidence or produce any material to discharge this onus. It simply went by the pamphlet of the product, that too selectively picking up that portion where the product was described as good for care of the skin as well, ignoring the fact that the same very literature gives more emphasis to the therapeutic value of the product. On the other hand, the assessee had filed various affidavits of the dealers as well as consumers in support of its plea that the product was essentially a medicament, which material was blissfully ignored by the Department.

20. Their Lordships in the said case had confronted with the question of classification of Vaseline Intensive Care Heel Guard. Analysing the case laws on the subject, their Lordships laid down the tests necessary to classify a product under the category of medicament or cosmetics, observed as follows:-

13. Discussion on this aspect was again revisited in the case of *Commissioner of Central Excise, Mumbai IV v. Ciens Laboratories, Mumbai* - (2013) 14 SCC 133 = [2013 \(295\) E.L.T. 3](#) (S.C.). In that case, a moisturising cream sold under the brand name 'Moisturex' was the product and it was to be determined as to whether it was used simply for care of the skin or was intended for treating or curing dry skin complaints like fissure feet, dry scaly skin conditions, ichthyosis etc. and, therefore, was a medicament. The argument of the Revenue that this cream was used merely for softening the skin was rejected in the following manner :

"15. The contention that "Moisturex" is a moisturising cream used for softening the skin cannot be appreciated. As we have already discussed, the use of the cream is not for the care of the skin. "Moisturex" is also not primarily intended to protect the skin from sun, tan or dryness, etc. On the other hand, it is intended for treating or curing the dry skin conditions of the human skin and for a few other skin complaints like fissure feet, dry scaly skin conditions, ichthyosis, etc. The argument advanced on behalf of the Central Excise that use of urea or lactic acid or propylene glycon, etc. is only as subsidiary pharmaceutical constituents and, hence, they cannot be held out as having curative, therapeutic or prophylactic value, cannot also be appreciated. It is the presence of the ingredients of the pharmaceutical constituents which makes the difference and not the percentage of the ingredients as held by this Court in *Meghdoot Gramodyog Sewa Sansthan v. CCE*, (2005) 4 SCC 15..."

And referring to the discussion and referring to the principle laid down in earlier case of *CCE, Mumbai-IV vs. Ciens Laboratories, Mumbai* [(2013) 14 SCC 133], held as follows:-

14. Main feature which needs to be taken note of from the aforesaid discussion is that small percentage of the ingredients of pharmaceutical constituents would not be a reason by itself to conclude that pharmaceutical constituents are subsidiary in nature. On the other hand, what is more relevant is the purpose for which the product is used, namely, functional test. On that basis, the product in that case was treated as medicament. What is important is that the Court, in the process, laid down the guiding principles which are to be kept in mind while determining the classification. These principles are formulated in the following manner :

“22. Thus, the following guiding principles emerge from the above discussion :

22.1. Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic.

22.2. Secondly, though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over the counter and are yet, medicaments.

22.3. Thirdly, prior to adjudicating upon whether a product is a medicament or not, the courts have to see what the people who actually use the product understand the product to be. If a product's primary function is “care” and not “cure”, it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament.”

21. Applying the above said principle to the facts of the present case, we find that even though the appellant had produced overwhelming evidences to establish that the manufactured product is medicament, which is also sold as ayurvedic medicament mentioning effectively on the packing of the products. No contrary evidence has been placed by the Revenue. We find that the appellant has satisfied the twin tests laid down by the Hon'ble Supreme Court in the case of CCE, Hyderabad Vs. Richardson Hindustan Ltd. (supra) and

subsequently followed in a series of cases. In the result, the impugned orders are set aside and appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 11.09.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...