IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/00786/2005

[arising out of Order-in-Appeal No.43/2005 (P), dated 28.06.2005 passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF CENTRAL EXCISE, PONDICHERRY APPELLANT

Versus

M/s.MADAN LABS (P) LTD RESPONDENT

Appearance:

For the Appellant Shri, Balamurugan, AC (AR)
For the Respondent Shri M.N.Bharathi, Adv.

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of hearing/decision **09-08-2018**

FINAL ORDER NO. 42229/2018

Per V. Padmanabhan:

Brief facts of the case are that the respondents are engaged in manufacture of Herbal Sheekakai Powder and Herbal Reetha Powder with the brand name "Meera". They had filed declaration dated 07.08.1996 under Rule 173B of Central Excise Rules, 1944 claiming the classification under Sub-heading 3003.39 of CETA, 1985 as an ayurvedic proprietary medicine attracting duty of 10%. The department was of the view that the said items being cosmetic preparations would fall under the classification 3305.90. A show-cause notice was issued demanding differential duty along with interest and also proposing for penalty. The original authority confirmed the demand, but, however, did not impose any penalty. Being aggrieved by confirmation of duty and classification, the appellant filed appeal before the Commissioner (Appeals) and vide order impugned herein, the Commissioner (Appeals) held that the impugned goods are classifiable under Chapter Heading 3003.39 and, therefore, set aside the demand of duty. Being aggrieved, the department is now before the Tribunal.

2. Heard Shri B. Balamurugan, AC (AR) for the Revenue and Shri M.N. Bharathi, learned Advocate for the respondent.

2.1 Learned Advocate Shri M.N. Bharati submitted that the product manufactured by the respondent i.e., Herbal Sheekakai Powder has medicinal properties and merits classification under Chapter Heading 3003.39 as medicaments. He justified the order passed to this effect by Commissioner (Appeals). He opposed the reliance placed by Revenue in the case of *Commissioner Vs Mediherbs* (supra), with the submission that the said decision passed by the Chennai Bench of the Tribunal, upon appeal being filed before the Hon'ble High Court of Madras, has been stayed. He further placed reliance on the decision of the Chennai Bench in the case of *Commissioner Vs M/s. Vale Exports Pvt. Ltd.* reported in *2018 (359) E.L.T.211 (Tri.-Chennai)* in which the Tribunal ordered for classification of certain ayurvedic medical preparations under Chapter 30 of the

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Central Excise Tariff Act. Finally, he stated that the impugned order may be sustained and the appeal filed by the Revenue be rejected.

2.2 The learned Authorized Representative Shri B. Balamurugan appearing for the department submitted that Chapter 30 apply to products suitable for therapeutic and/ or prophylactic uses, whereas, the impugned products sheekakai powder does not have any such properties. The Commissioner (Appeals) has been carried away by the fact that the respondents have obtained the drug license for the product. But the product is not sold in the market as medicine and that it is advertised in TV and other media as preparations for use on the hair and is understood by public as toiletry requisite only. The respondents have not produced any evidence to claim that the product has been prescribed by any medical practitioner to be called as a medicine. The respondents having not discharged their burden of proof to classify the item under Chapter Heading 30, the Commissioner (Appeals) ought not to have held that the products are classifiable under Chapter Heading 30. The learned Authorised Representative also relied upon the decision rendered by Tribunbal in the case of *Commissioner of Central Excise Vs. Medi Herbs – 2006 (202) E.L.T. 600* in which the very same herbal shikakai powder was held to be classified under Chapter Heading 3305.99.

3. The crux of the dispute in the present case is whether Herbal Sheekakai Powder merits classification under Chapter 30 as "medicaments" or under Chapter 33 as "preparations for use on the head". As per the relevant Chapter Notes, we find that Chapter Note 1 (d) of Chapter 30 'excludes preparations of Chapter 33 even if they have therapeutic and prophylactic properties'. Secondly, Chapter Note

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2 to Chapter 33 states that Chapter Sub-Heading 33.03 to 33.07 apply inter alia 'to products 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 other toilet preparations or put up in a form clearly specialized 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'. In the present case, there is no evidence put forward by the respondent that the impugned products are sold in the market as medicines. Further, it is also seen that the said products are advertised in TV as well as other media as preparations used on the hair and also understood by public as toi8letry requisite only. The adjudicating authority has take note of all these factors as well as literature available on the goods which indicated the product does not have any property of curing disease. The Supreme Court in the recent judgment in the case of *Commissioner of Central Excise, Mumbai Vs. M/s. CIENS Laboratories, Mumbai – 2013 (295) E.L.T. 3 (S.C.)* has held that for an ayurvedic medicine to be classified under Chapter 33 has to pass the test whether it is for cure of any disease. If the same is only meant for care, then such product would not fall under medicament.

4. Applying the decision of the apex court to the present case, it is obvious that the product manufactured is for care of the hair, even though, it may have subsidiary medicinal properties.

5. In view of the above discussions, we set aside the impugned order and restore the order of the original authority, in which case, the

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product has been classified under CETH 3305.99, as also the duty demand. The appeal filed by department is allowed.

(Dictated and pronounced in open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

प्रमाणित प्रति / CERTIFIED TRUE COPY
24 AUG 2018
उप - पंजीकार / Deputy Registrar
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चेन्नई / CHENNAI

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