IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 27.7.2017

Appeal No. E/56276/2013 -DB

(Arising out of Order-in-Appeal No. 230/BPL/2012 dated 26.11.2012 passed by the Commissioner, Central Excise & Service Tax, Bhopal)

M/s Herbal House — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance

Shri Shaswat Arya, Advocate - for the appellant

Shri M.R. Sharma, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 55581/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 230/2012 dated 26.11.2012. The disputed period is April 2001 to February 2002.

2. The brief facts of the case are that during the period under consideration, the appellant was engaged in the manufacture of wash powder (Amla and Shikakai). The appellant claimed that this is a medical preparation but the Department considered it is a cosmetic. So, duty was demanded. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Shaswat Arya, ld. Advocate for the appellant and Shri M.R. Sharma, ld. DR.

4. After hearing both the sides, it appears that for the earlier period, in assessee's case, the issue came up before the Tribunal (***Herbal House Vs. CCE, Bhopal*** - Final Order No. A/55599/2016 dated 23.11.2016), where by following the ratio laid down by the Honble Supreme Court, the appeal was dismissed. The Tribunal observes as under:

> "9. It may be mentioned that the identical issue has come up before the Hon'ble Supreme Court in the case of ***Meghdoot Gramodyog Sewa Sansthan Vs. CCE, Lucknow*** – 2004 (174) ELT 14 (SC), where the Hon'ble Supreme Court observed that :
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>> 4. In coming to the conclusion that all the six products were classifiable under preparation for use on the hair, the Tribunal held that except for certain letters from doctors, the appellants had not produced any evidence to show that the products were prescribed by Medical Practitioners as medicines for various diseases. The second basis of the Tribunal's conclusion was that there was nothing to show that patients were kept under observations, or that the results said to have been achieved by the use of the products were obtained by keeping the patients in hospitals over a period of time. Thirdly, it was held that the Commissioner had found that the packing of the products would indicate that the products were cosmetics and not medicines or drugs since it depicted 'a lady with black flowing hair' and other similar images.

> **5.** The decision of the Tribunal is unsustainable on the reasoning given. A product may be medicinal without having been prescribed by a Medical Practitioner. It was also not necessary for a person manufacturing medical products to claim classification under Tariff Heading 3303.03[1] without establishing that the product had in fact been tested on patients in controlled situations or that the outcome had not been tested for effectiveness. This would be particularly true in the cases where the products are claimed to be based on traditional ayurvedic formulae

10. By following the ratio laid down by the Hon'ble Supreme Court, we find no reason to interfere with the order passed by the lower authority pertaining to the second item namely, natural hair wash (Amla Shikakai Powder). The orders of the lower authorities are hereby sustained along with the reasons mentioned therein pertaining to the Natural Hair Wash Powder."

5. By following our earlier order (supra), we find no reason to interfere with the impugned order. The same is hereby upheld along with the reasons mentioned therein.

6. In the result, appeal filed by the appellant is dismissed.

(Dictated & pronounced in open Court)

(Ashok K. Arya) Member (Technical)	(Justice Dr. Satish Chandra) President

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