IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76064 of 2014

(Arising out of Order-in-Original No. 26/Commr/CE/Kol-III/2013-14 dated 31.03.2014 passed by the Commissioner of Central Excise Kolkata III Commissionerate 180, Shantipally, Rajdanga Main Road Kolkata-700107)

M/s. Glamour World Ayurvedic Company Pvt. Ltd. : Appellant
39/4/1, A. K. Mukherjee Road,
Noapara, Kolkata-700090

VERSUS

Commissioner of Central Excise, Kolkata III : Respondent
Commissionerate, Kolkata
180, Shantipally, Rajdanga Main Road Kolkata-700107

WITH

Excise Appeal No. 76065 of 2014

(Arising out of Order-in-Original No. 26/Commr/CE/Kol-III/2013-14 dated 31.03.2014 passed by the Commissioner of Central Excise Kolkata III Commissionerate 180, Shantipally, Rajdanga Main Road Kolkata-700107)

Shri Amit Gupta, Director : Appellant
M/s. Glamour World Ayurvedic Company Pvt. Ltd.
39/4/1, A. K. Mukherjee Road,
Noapara, Kolkata-700090

VERSUS

Commissioner of Central Excise, Kolkata III : Respondent
Commissionerate, Kolkata
180, Shantipally, Rajdanga Main Road Kolkata-700107

WITH

Excise Appeal No. 76105 of 2015

(Arising out of Order-in-Original No. 02/Commr/CE/Kol-III/2015-16 dated 08.09.2015 passed by the Commissioner of Central Excise Kolkata III Commissionerate 180, Shantipally, Rajdanga Main Road Kolkata-700107)

M/s. Glamour World Ayurvedic Company Pvt. Ltd. : Appellant
39/4/1, A. K. Mukherjee Road,
Noapara, Kolkata-700090

VERSUS

Commissioner of Central Excise, Kolkata III : Respondent
Commissionerate, Kolkata
180, Shantipally, Rajdanga Main Road Kolkata-700107

APPEARANCE:

Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.75304-75306/ 2026

DATE OF HEARING: 18.02.2026
DATE OF PRONOUNCEMENT: 27.02.2026

ORDER: [PER SHRI ASHOK JINDAL]

Both the appeals filed by M/s. Glamour World Ayurvedic Company Pvt. Ltd. are having a common issue and the one appeal, filed by Shri Amit Gupta, Director, is against the imposition of penalty. Therefore, all these appeals are disposed of by a common order.

2. The facts of the case are that intelligence was developed that the appellant-company was engaged in manufacture of Ayurvedic proprietary medicines, cosmetics and toiletry preparations falling under Chapters 30 and 33 of the First Schedule to the Central Excise Tariff Act, 1985, without having Central Excise Registration and clearing the same without payment of central exercise duty on the said manufactured goods. Therefore, acting upon such information that, without obtaining Central Excise Registration Certificate and without payment of central exercise duty, the appellants were engaged in evasion of central excise duty by way of manufacture and clandestine clearance of their finished goods i.e., Ayurvedic proprietary medicines, cosmetics and toiletry preparations, falling under

Chapters 30 and 33 of the First Schedule to the Central Excise Tariff Act, 1985.,

3. Simultaneous searches were conducted by the officers of the DGCEI, Kolkata Zonal Unit, at factory premises and other related premises of the appellants on 10.04.2012, which resulted in seizure of finished goods lying in the factory premises on that day, along with private records/documents.

Statement of Shri Uday Narayan Pandey, Production Chemist of the appellant-company was recorded on 10.04.2012, who inter alia stated that appellant company was manufacturing Ayurvedic proprietary medicines as approved by the Drugs Controller.

4. Statement of Shri Amit Gupta, Director of the appellant-company, was also recorded on 13.04.2012, who inter alia stated that they were manufacturing Ayurvedic products on the strength of Licence granted by Directorate of ISM Drug Control, Govt. of West Bengal, who certified the products as "Ayurvedic Patent & Proprietary Medicines" as per the definition under Section 3(h)(l) of the Drugs & Cosmetics, 1940; that they were manufacturing every product with the approval of Drugs Controller. He also informed that all products were Ayurvedic products having different therapeutic value and meant for some cure / prevention. He was shown a copy of the Circular No. 333/49/97-CX dated 10.09.1997 relating to classification of products under the Central Excise Tariff Act, to which he stated that they were under the belief that the said products were not covered under central excise, but after the search operations, after consulting with experts in the matter, they have applied for

registration; that they are manufacturing the goods exclusively in accordance with the formula prescribed in the authoritative books.

5. A further statement of Shri Amit Gupta was also recorded on 28.09.2012.

6. On the basis of the investigation, a case was made out against the appellants and a Show Cause Notice dated 03.01.2013 was issued, asking to show cause as to why the goods detailed in the Annexures 1 and II of the said Notice should not be classified as cosmetics / toilet preparations under Chapter 33 of the Central Excise Tariff Act, 1985 (5 of 1986) and the goods detailed in Annexure-III should not be classified as pharmaceutical products under Chapter 30 of the Central Excise Tariff Act, 1985 (5 of 1986); the goods seized (as detailed in Annexure-A-3) should not be confiscated under Rule 25 of the Central Excise Rules, 2002; and central exercise duty amounting to Rs.4,54,93,375/- (inclusive of cess) should not to be demanded under Section 11(A)(4) of the Act. A proposal was also made for demand of interest and imposition of penalty on appellant-company as well as its Director, Shri Amit Gupta. The appellants contested the Show Cause Notice, but the impugned Order-in-Original dated 31.03.2014 came to be passed, classifying the goods under Chapter 33 of the Central Excise Tariff Act, 1985, leaving only two items under Chapter 30 of the Central Excise Tariff Act, 1985, and confirming the demand of duty, along with interest; penalties have been imposed on both the appellants. The ld. adjudicating authority also held that goods seized goods are liable for confiscation, allowing the same

to be released on payment of redemption fine of Rs.16 lakhs.

7. For the subsequent period, another Show Cause Notice dated 06.05.2014 was issued to demand central excise duty amounting to Rs.76,41,574/- (inclusive of cess), along with interest, and to impose a penalty on the appellant-company. The said Show Cause Notice was also adjudicated by way of the impugned Order-in-Original dated 08.09.2015, confirming the demand proposed in the Show Cause Notice, along with interest, and imposing penalty on the appellant-company.

8. Against the said orders, the appellants are before us.

9. The Ld. Counsel appearing on behalf of the appellants submitted that the whole investigation is based on an incorrect appreciation of the statutory provisions and materials on record. It is his submission that classification of similar goods has been preferred or followed and the appellant-company was eligible for exemption for the period up to February 2011; that they were undertaking manufacturing of Ayurvedic proprietary medicines / products on the strength of License granted by Directorate of ISM Drug Control and that manufacture of the impugned goods was done strictly following the formula as submitted by the appellants and as approved by the Directorate of ISM Drug Control. He also informed that the selling of goods under specific proprietary names was done since authoritative books do not specify any name given to any of the items; the goods were

manufactured conclusively in accordance with the formula prescribed in authoritative books. It is also submitted that the Director of ISM Drug Control vide letter dated 28 August 2012 in response to the Department's letter dated 27 July 2012 opined that the goods manufactured by appellant-company were medicaments and that the use of preservative colours, flavours, etc., were done in compliance of Rule 169 of Drugs and Cosmetics Rules, 1945. It is the appellant’s contention that the said letter dated 28 August 2012 of the Directorate of ISM Drug Control has not yet been relied upon and same has been suppressed while issuing the Show Cause Notice(s); the Drug License may be used as a guide but is not the determining factor for classification, without disclosing any material in support of the same, and such classification cannot be maintained. The Ld. Counsel for the appellants also submits that selling of goods to distributors/dealers/retailers without requirement of any prescription or directly selling the goods on door-delivery basis does not automatically make the product as “cosmetics”.

10. It is also his submission that items as mentioned in Annexure-I, Annexure-II and Annexure-III of the said Show Cause Notice are indicative of the curative nature since the doses and durations of use were prescribed; that the test report from the State Pharmacopoeial Laboratory & Pharmacy of Indian Medicine, Kalyani, Nadia sent to the Directorate of ISM Drug Control, Kolkata further proves that goods were Ayurvedic products of standard quality. Therefore, the Ld. Counsel for the appellant submits that the same are classifiable under Chapter 30 of the Central Excise Tariff and are

not dutiable in terms of the Notification No. 03/2005-C.E. dated 24.02.2005 and became dutiable with effect from 01.03.2011 vide Notification No. 01/2011-C.E. dated 01.03.2011 as per which the duty @1% ad valorem was introduced; the same was enhanced to @2% ad valorem w.e.f. 17.03.2012 vide Notification No. 16/2012-C.E. dated 17.03.2012; that the appellant-company took registration thereon and started paying duty w.e.f. 01.03.2011.

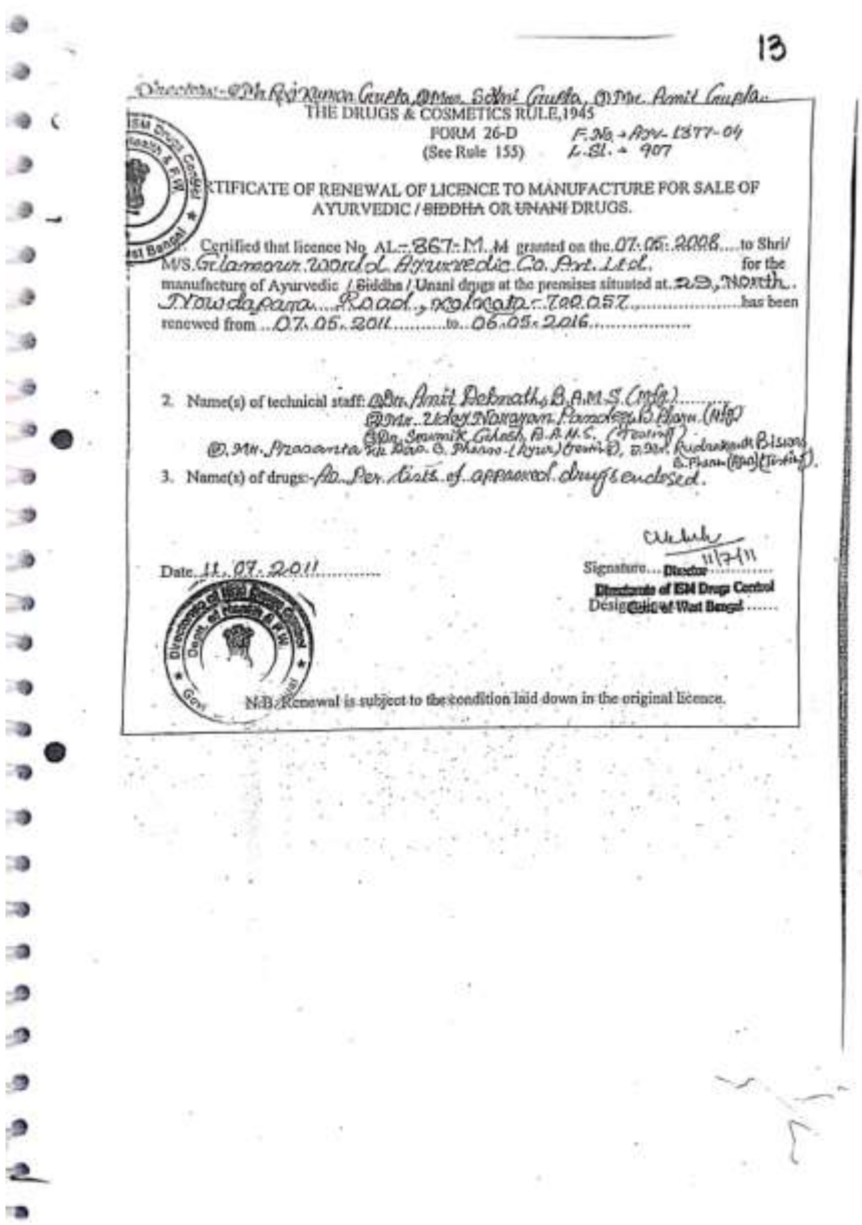
11. In view of the above submissions, the Ld. Counsel for the appellants contends that the impugned proceedings against the appellants are not sustainable and therefore, prayed that the impugned orders, confirming the demands of duty, interest, penalties and confiscation of the seized goods, be set aside.

12. On the other hand, Learned Authorized Representative of the Revenue supported the impugned orders.

13. Heard the parties and considered their submissions.

14. For better appreciation of the facts of the case, the following documents are required to be considered, which are as follows: -

<u>(1) Certificate of Renewal of Licence to Manufacture for Sale of Ayurvedic Drugs:</u>



13

Directors:- (1) Mr. Raj Kumar Gupta, (2) Mrs. Sobhni Gupta, (3) Mr. Amit Gupta

THE DRUGS & COSMETICS RULE,1945

FORM 26-D F.No.- AYV-1377-04
(See Rule 155) L.Sl. - 907

CERTIFICATE OF RENEWAL OF LICENCE TO MANUFACTURE FOR SALE OF AYURVEDIC / ~~SIDDHA~~ OR ~~UNANI~~ DRUGS.

1. Certified that licence No. AL-867-M.M granted on the 07.05.2006 to Shri/M/S. Glamour World Ayurvedic Co. Pvt. Ltd. for the manufacture of Ayurvedic / Siddha / Unani drugs at the premises situated at 29, North Nowdapara Road, Kolkata - 700 057 has been renewed from 07.05.2011 to 06.05.2016.

2. Name(s) of technical staff: (1) Dr. Amit Debnath, B.A.M.S. (Mfg.)
(2) Mr. Uday Narayan Pandey, B.Pharm. (Mfg)
(3) Dr. Saumik Ghosh, B.A.M.S. (Testing)
(4) Mr. Prasanta Kr. Das, B. Pharm. (Ayur) (Testing), (5) Mr. Rudrakanta Biswas, B.Pharm (Ayu) (Testing).

3. Name(s) of drugs:- As Per lists of approved drugs enclosed.

Date. 11.07.2011

Signature... Director
11/7/11
Directorate of ISM Drugs Control
Designation... Govt. of West Bengal

N.B.: Renewal is subject to the condition laid down in the original licence.

(2) Certificate of Goods Manufacturing Practices (GMP) to Manufacture Ayurveda, Siddha or Unani Drugs:

14

Integrated State Medicine

GOVERNMENT OF WEST BENGAL
Department of Health & Family Welfare
Directorate of ISM Drugs Control
3rd Floor, 205, Vivekananda Road, Kolkata - 700006

ISMDC/Ayv. 1377 .... (G.M.P) 50/08 .... Date 08.07.2011

Form 26-E-1 [See Rule 155-B]

CERTIFICATE OF GOOD MANUFACTURING PRACTICES (GMP) TO MANUFACTURE AYURVEDA, SIDDHA OR UNANI DRUGS.

Certified that manufacturing unit Licensee, namely

M/s Glamour World Ayurvedic Co. Pvt. Ltd.

situated at 29, North Nowdapara Road, Kolkata-700 057.

State: WEST BENGAL Licence No. AL-867.....M/(H) has complied with the requirement of Good Manufacturing Practices of Ayurveda/Siddha/Unani drugs as laid down in Schedule "T" of the Drugs and Cosmetic Rules, 1945.

This certificate is valid for the period from ..07.05.2011... to ...06.05.2016..

The Good Manufacturing Practices (GMP) is valid for the various dosage forms or Rasaushadhis as follows:

1. "Churna"
2. "Prabahi Kwath"
3. "Ksara"
4.

11/7/11

Director
Directorate of ISM Drugs Control
Govt. of West Bengal
Director

<u>(3) The opinion on classification of Ayurvedic products manufactured by the appellant viz., M/s. Glamour World Ayurvedic Co. Pvt. Ltd. – as sought:</u>

16

GOVERNMENT OF WEST BENGAL
DEPARTMENT OF HEALTH & FAMILY WELFARE
DIRECTORATE OF ISM DRUGS CONTROL
205, VIVEKANANDA ROAD,
KOLKATA – 700 006

192/
No:DISMDC/Compt/62/12

Dated : 28th August, 2012.

To,
The Addl. Director,
Directorate General of Central Excise Intelligence,
Kolkata Zonal Unit.
4/2, Karaya Road, Kolkata – 700 017.

Sub: Opinion on classification of Ayurvedic products manufactured by M/s. Glamour World Ayurvedic Co. P. Ltd.—as sought.
Ref : His letter no-DGCEI.No.61/KZU/Kol/Gr.A/12/3951 dt.27.7.12.

Sir,

Reference above, please find below the parawise opinion/comment as per your letter.

- ✓ For para – 1. : As you have probably seen the original copy of Approved products list, vide your **Annexure-A**, all these products are duly licensed products under Manufacturing licence No. AL-867-M of this Directorate issued under the provision of Central Act i.e. Drugs & Cosmetics Act, 1940 and rules thereunder.
- ✓ For para – 2. : The above stated products under Annexure – A have been licenced under Rule -158-B. I. (B) (copy enclosed) (Annexure-I) of Drugs & Cosmetics Rules in the form of patent or proprietary medicines [under sec-3 (h) of Drugs & Cosmetics Act]. It may be noted that 'Definition' of Ayurvedic, Siddha or Unani drug is covered not only in Sec-3 (a) but also in sec-3 (h) [Annexure-II]

The sec-3 (h) does imply manufacture with ingredients written in the Authoritative books of the First Schedule, but not exclusively in accordance with the formula described in the authoritative books as specified (vide Rule-158 (B) (ii) & (iii) – Ballya / Posak (for promotional & preventive health) ; and Saundarya prasadak (for oral, skin, hair and body care).

It may be noted that Ayurvedic medicines are 5000 years of concept, when Shastriya medicines were meant to be dispensed for own patients only by Kaviraj or Ayurvedic physicians-for captive consumption. So, there was no need of colors, flavour and preservative. Gone are those days. Now, products are made in large quantities on commercial basis to cater to large populace. Products are marketed by companies with huge stocks amid competitions. So, these have been proprietary brands and use of excipients is allowed in all ASU products.

Further, in response to your query it may be noted that preservative, flavour and colour are 'Permitted excipients' for use in Ayurvedic, Siddha & unani Drugs as per Rule-169 of Drugs &

17

2

...Rules (copy enclosed-Annexure-III) Following inclusive Rule -161, the Rule-127 lists the ... to be declared on the label.[Annexure-IV].

Enclosed (Annexure-V) is also a Test Report from Govt. Statutory Laboratory (SPLPIM, ...) vide Test Report No:SPLPIM/DTL/SS/67/12 dt.02.08.12 declaring the product "AYURVEDIC PRODUCT" in OPINION Column by the Govt. Analyst.

For para-3: As you have stated, 'Ayurvedic product-proprietary medicine' has been rightly made as per Rule -158-B.I.(B) for their branded products/formulations, like many available brands throughout the country. The firms are also free to get 'Trade mark registration' for names of brand-products.

However, labeling provisions are binding on the firm (Rule-161), but labels need not and are not approved by Drugs Control Authority. Only product list with composition specified are approved i.e licensed.

For para-4: There is no scope of misconceived judgement or analysis of very critical or minute matters of classification.

This Directorate as Drugs Control authority is duly empowered to grant licence to Ayurvedic, Siddha or Unani products after judging all criteria as per law and after specific recommendation of its Ayurvedic Expert Committee as per directives of law (for such products). Rational combination, non-controversy in name and pack sizes are judged for proprietary medicines by this Govt. appointed committee [vide sec-3 (h) of Act].

Shastriya (classical) medicines are strictly judged as per sec-3 (a) and approved. There is no scope of change of quantity of ingredients and product name from those given in Texts for such products, viz. 'Ashokarista' for any company. However, drug licence is needed only for manufacture of Ayurvedic, Siddha and Unani Drugs and no drug licence for sale is needed (only trade licence for that purpose) for these Drugs. For grant of referred manufacturing drug licence of such drugs strict compliance to rules (vide schedule-T-Good manufacturing Practice) for production infrastructure is needed. Prophylactic (promotional and preventive health) and caring effect (as mentioned) are covered in Rule-158-B-I(B), as referred earlier.

Some case reference as per Annexure-VI will help to clarify.

Specified dosage, limited time of use is also not mandatory in many modern medicines (Allopathic) sold as O.T.C. (over the counter) products, e.g. Dettol, Boroline and external ointments, and many others.

Mode of use and selling, only cannot be criteria for terming a product as 'Cosmetic' or otherwise. There are wide and clear 'definitions' in Act and Rules. [All Sections and Rules referred herein are meant of 'Drugs & Cosmetics Act -1940 and Rules thereunder-1945'].

18

So, to ask for any reconsideration For classification/terminology (Drug, cosmetics etc.) in the said Act and Rule - there is an Authority 'Drugs Consultative committee' or DCC of Govt. of India, formed as per the said Act.

Remarks: As all above may be perused, in conclusion it is stated that on statutory application with requisite fees, compliance with conditions of licence (Drug licence with Sch.-T), Ayurvedic drug licence for all the listed products (at your Annexure – A) have been granted and are in order as these are decidedly Ayurvedic products as per Law.

Yours faithfully

28/8/12

Director of ISM Drugs Control

Govt. of West Bengal.

Enclo: As stated above.

<u>(4) Certificate issued by Directorate of ISM Drugs Control, Kolkata for the products manufactured by the appellant viz., M/s. Glamour World Ayurvedic Co. Pvt. Ltd.:</u>

19

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF ISM DRUGS CONTROL
205, VIVEKANANDA ROAD
KOLKATA - 700 006

No. 266/DISMDC/AYV-1377-04.

Kolkata, the 29.11.2009

TO WHOM IT MAY CONCERN.

This is to certify that the Products, enclosed with this letter, are Ayurvedic Patent & Proprietary Medicines under the definition of section 3 h (i) of the Drugs & Cosmetics Act 1940. Which are duly approved by this Directorate.

Enclosed: [illegible]

DIRECTOR.W.B

To
M/s. Glamour World Ayurvedic Co. Pvt. Ltd.
29, North Nowdapara Road,
Kolkata – 700 057.

19.11.09

20

SL. NO.	NAME OF PRODUCTS
1	GLOW SILK
2	GLOW MOIST
3	GLOW SHINE
4	GLOW & GLOW
5	GLOW HAIR
6	GLOW FRESH
7	GLOW ACTIVE
8	GLOW SAFE
9	GLOW CLEAN
10	GLOW YOUNG
11	GLOW MEHENDI
12	GLOW SINDUR
13	GLOW HEAT
14	GLOW SANDAL
15	GLOW SLIM
16	GLOW [illegible] MOISTURISER
17	GLOW YOUNG MOISTURISER
18	GLOW SMOOTH MOISTURISER
19	GLOW FAIR MOISTURISER
20	GLOW SAFE SUN SCREEN LOTION
21	GLOW FEET CARE
22	GLOW HAIR SOLUTION
23	GLOW SILK SOLUTION
24	GLOW FAIR SOLUTION
25	GLOW SHINE SOLUTION
26	GLOW HAIR SHAMPOO

17/11/09.
DIRECTOR
Directorate of ISM Drugs Control
West Bengal

15. On going through the above documents, we find that appellant-company was manufacturing the impugned goods under Drug License number AL-867-M dated 07.05.2008, which was renewable from time to time. It is also observed that the appellant-company has also obtained a 'Certificate of Goods Manufacturing Practices (GMP)' to manufacture Ayurveda, Siddha or Unani Drugs. An opinion has also been obtained from the Directorate of ISM Drugs Control vide letter dated 28.08.2012 which clearly specifies that:

> *This Director as Drugs Control authority is duly empowered to grant licence to Ayurvedic, Siddha or Until Products after judging all criteria as per law and after specific recommendation of an Ayurvedic Expert Committee as per directives of law (for such products) ……"*

16. Admittedly, the same has been obtained by the appellant-company and the said opinion has not been disclosed to the appellant and not relied upon while issuing the Show Cause Notice(s) which shows that the Show Cause Notice issuing authority had issued the show cause notice with mala fides.

17. In fact, it is concluded by us that on the basis of opinion and licenses produced by the appellant-company, that appellants are manufacturing only Ayurveda medicines.

18. The same view was taken by the Hon'ble Apex Court in the case of Commissioner of Central Excise Kolkata v. Sharma Chemical Works 2003(154) ELT (328) Supreme Court wherein the Honorable Apex Court observed as under: -

> "We have heard the parties and considered the submissions made by them. We have also read the opinion of the majority Bench and the minority opinion of the Technical Member. It is a settled law that the onus or burden to show that a product fall within a particular Tariff Item is always on the revenue. Mere fact that a product is sold across the counters and not under a Doctors prescription, does not by itself lead to the conclusion that it is not a medicament. We are

also in agreement with the submission of Mr. Lakshmikumaran that merely because the percentage of medicament in a product is less, does not ipso facto mean that the product is not a medicament. Generally the percentage or dosage of the medicament will be such as can be absorbed by the human body. The medicament would necessarily be covered by fillers/vehicles in order to make the product usable. It could not be denied that all the ingredients used in Banphool Oil are those which are set out in the Ayurveda text books. Of course the formula may not be as per the text books but a medicament can also be under a patented or proprietary formula. The main criteria for determining classification is normally the use it is put to by the customers who use it The burden of proving that Banphool Oil is understood by the customers as an hair oil was on the revenue. This burden is not discharged as no such proof is adduced. On the contrary we find that the oil can be used for treatment of headache, eye problem, night blindness, reeling, head weak memory, hysteria, amnesia, blood pressure, insomnia etc. The dosages required are also set out on the label. The product is registered with Drug Controller and is being manufactured under a drug licence."

19. Another aspect to be kept in mind is that the revenue is bound by the circulars issued by the Board. The Board

20. We further take note of the fact that the onus is on the Revenue to prove that the goods manufactured by the appellant-company are not Ayurvedic medicines but cosmetics / toiletry preparations, with documentary evidence. However, in the present case, the Revenue has not produced any test report or test results with regard to the products in question. In that view, it cannot be termed that appellant-company is manufacturing cosmetics and toiletry preparations. Therefore, we hold that the products manufactured by the appellant-company are none other than "Ayurvedic medicines" falling under Chapter 30 of the Central Excise Tariff Act, 1985. Consequently, we do not find any merit in the impugned orders and thus the same are set aside. In view of the above, the demands of duty confirmed against the appellants, along with interest, imposition of penalties on all the appellants and confiscation of the seized goods are not sustainable in the eyes of law and accordingly, the same are set aside.

21. In the result, the appeals are allowed, with consequential relief, if any.

(Order Pronounced in Open court on 27.02.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP