

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD**

* * *

**TAX REVISION CASE Nos.155, 156, 166, 169, 182, 183, 187,
188, 192, 193 and 211 of 2004**

Between:

The State of Andhra Pradesh and Others.

Petitioners

VERSUS

M/s.Himani Limited and Others.

Respondents

COMMON ORDER PRONOUNCED ON: 14.06.2024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

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! Counsel for Petitioner(s) : Mr. Lakshmi Kumaran,
learned counsel, along
with Mr. Narendra Dave,
Mr. Sumanth Chanda and
Ms. Anushka Rastogi.

^Counsel for the Respondent(s) : Mr. Swaroop Oorilla, learned
Standing Counsel for
Commercial Taxes

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> HEAD NOTE:

? Cases referred

- 1) 2023 SCC Online SC 561
- 2) 2009 (245) E.L.T. 71 (Ker.)
- 3) 2011 (263) E.L.T. 335 (All.)
- 4) 2015 SCC Online Gau 818
- 5) (1986) 62 STC 76

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND**

THE HON'BLE SRI JUSTICE N.TUKARAMJI

**TAX REVISION CASE Nos.155, 156, 166, 169, 182, 183, 187,
188, 192, 193 and 211 of 2004**

COMMON ORDER: (per the Hon'ble Sri Justice **P.SAM KOSHY**)

These are eleven Tax Revision Cases assailing the common order passed by the Sales Tax Appellate Tribunal, Hyderabad (hereinafter referred to as 'STAT') in T.A.No.1124 of 2000, T.A.No.1125 of 2000, T.A.No.1301 of 2001, T.A.No.1305 of 2001, T.A.No.503 of 2003, T.A.No.504 of 2003, T.A.No.505 of 2003 and T.A.No.506 of 2003 decided on 31.03.2004.

2. Heard Mr. Lakshmi Kumaran, learned counsel along with Mr. Narendra Dave, Mr. Sumanth Chanda and Ms. Anushka Rastogi, learned counsel for the petitioner/assessee and Mr. Swaroop Oorilla, learned Standing Counsel for Commercial Taxes, appearing for the respondent/Department.

3. These Tax Revision Cases pertains to sister companies known as M/s.Himani Limited and M/s.Emami Limited. Of these eleven Tax Revision Cases, three each have been filed by two assessees. Tax Revision Case Nos.193, 188 and 187 of 2004 have been filed by M/s.Himami Limited for the assessment years 1996-

1997, 1997-1998 and 1998-1999. There are two Tax Revision Cases in respect of the company where the challenge has been made by the Department i.e. Tax Revision Case Nos.211 and 155 of 2004 challenging the order for the assessment years 1997-1998 and 1998-1999. Likewise, there are three Tax Revision Cases filed by M/s.Emami Limited i.e. Tax Revision Case Nos.182, 183 and 192 of 2004 for the assessment years 1998-1999, 1999-2000 and 2000-2001. Similarly, there are three Tax Revision Cases filed against M/s.Emami Limited by the Department, those are Tax Revision Case Nos.166, 169 and 156 of 2004 for the assessment years 1998-1999, 1999-2000 and 2000-2001.

4. The whole dispute revolves around six products being manufactured and marketed by the two sister concerns. Those are Navaratan Oil, Gold Turmeric Ayurvedic Cream, Nirog Dant Power Lal, Boroplus Antiseptic Cream, Boroplus Prickly Heat Powder and Sonachandi Chavanprash.

5. The whole issue involved in the instant set of Tax Revision Cases are whether the aforementioned products manufactured by two sister concerns would fall within the purview of cosmetics or drugs under the APGST Act, 1957 (for short, 'the Act'). The question substantially to be decided is, whether the aforementioned products would fall under Entry 36 or Entry 37 of the CGST Act and TGST Act? The issue primarily arises on account

of the fact that if the products would fall under the classification of a cosmetic, then it becomes leviable of GST at the rate of 20%. On the other hand, if these products are to be treated as drugs within Entry 37, then these products would be leviable of duty at the rate of only 10%.

6. (A) Of the six products, the STAT has held (i) Navaratan Oil (ii) Gold Turmeric Ayurvedic Cream and (iii) Nirog Dant Power Lal to be products which are otherwise either cosmetics or toiletry products. Thus, it was this finding of the STAT which has been challenged by the petitioner/assessee through the instant Tax Revision Cases.

(B) Whereas, the STAT further also held that the three products (i) Boroplus Antiseptic Cream (ii) Boroplus Prickly Heat Powder and (iii) Sonachandi Chavanprash have been held to be drugs and not cosmetics and it is this declaration of these three products as drugs which has led to the Department filing the Tax Revision Cases. At the same time, the assessee is fighting the exclusion of these three products (i) Navratan Oil (ii) Gold Turmeric Ayurvedic Cream and (iii) Nirog Dant Powder Lal as drugs which led to filing of Tax Revision Cases by the assessee.

7. As can be seen from the previous paragraphs, there are two set of Tax Revision Cases. For convenience sake, we take up the

Tax Revision Cases which have been filed by the Department first. Those are Tax Revision Case No.155 of 2004 for the assessment year 1998-1999, Tax Revision Case No.166 of 2004 for the assessment year 1998-1999, Tax Revision Case No.169 of 2004 for the assessment year 1999-2000, Tax Revision Case No.211 of 2004 for the assessment year 1997-1998 and Tax Revision Case No.156 of 2004 for the assessment year 2000-2001. It is pertinent to mention here that there was yet another Tax Revision Case which was filed by the Department i.e. Tax Revision Case No.161 of 2004 for the assessment year 1996-1997 which was dismissed for default vide order dated 20.07.2009.

8. There does not seem to be any further effort made for restoration of the said Tax Revision Case and by efflux of time, the assessment order so passed for the assessment year 1996-1997 has attained finality. Whatever be the effect of the same, we proceed to decide the substantive issue so far as the aforementioned remaining five Tax Revision Cases filed by the Department challenging the findings of the STAT. So far as (a) Himami Sonachandi Chavanprash (b) Himami Boroplus Antiseptic Cream (c) Himami Boroplus Prickly Heat Powder being ordered to be treated as drugs and not as a cosmetic i.e. treating these three products falling under Entry 37 and not under Entry 36 of the I

Schedule of the Act and with a further direction to revise the assessment orders accordingly.

9. In the three Members Bench of the STAT, one of the Departmental Member is said to have taken a contrary view in respect of the aforesaid majority view of the STAT and all the appeals before STAT stood decided in accordance with the majority view.

10. Now for adjudicating upon the dispute whether the STAT was justified and the order was proper and legal or not, we proceed to deal with the characteristics of the three products.

11. So far as the product Himani Sonachandi Chavanprash is concerned, the rapper affixed on the container in which this Himani Sonachandi Chavanprash is sold in the market would disclose its composition whereby it has been specifically mentioned that the product is made of around fifty two rare herbs and minerals along with the powder of gold, silver and saffron and it also specifically reflects the benefits of consuming Himani Sonachandi Chavanprash like (i) improves eye sight and complexion (ii) builds immunity (iii) helps in absorbing quashment (iv) strengthens teeth and bones (v) improves stomach and forms healthy blood (vi) builds body and active muscles and lastly (vii) meets everyday energy needs.

12. Another fact which needs to be reflected/appreciated at this juncture is the literature in respect of Himani Sonachandi Chavanprash and the reference of the said product in the books and texts used by the Vaidis in Ayurvedic discipline. The reference of this product is found in:

“(REF. – CHARAK SAMHITA – CHIKITSA STHANA – CHAPTER 01 – RASAYAN ADHYAHA – PADA 01 – SHLOKA 63 – 60)
(#REF. – BHAVA PRAKASHA, CHAUKHAMBHA, 8TH EDITION 1993, PG.NO.523, 461, 90, 455 RESPECTIVELY)
(## REF. – BHAVA PRAKASH, P.NO.234)”

13. In addition to this, what is also required to be understood is that the petitioner/assessee has obtained license for manufacturing of the said Himani Sonachandi Chavanprash and is being sold as a product under the Drugs and Cosmetics Act, 1940. According to the petitioner/assessee, it would be a product which would fall under Entry 37 of the 1st Schedule of Act. It is this, what is being claimed by the petitioner/assessee as well. The STAT has duly appreciated the aforesaid factual matrix of the case and also the ingredients of the product coupled with the appreciation of definition of “Cosmetics” under the Drugs and Cosmetics Act, 1940, where “Cosmetics” are defined under Section 3(aaa) and “Drugs” are defined under Section 3(b) and has reached to the conclusion of the product being drug and not cosmetic. Thus, the said issue was decided in favour of the petitioner/assessee.

14. Disputing the said finding, the learned Standing Counsel for the respondent/Department contended that the product has saffron in it and since saffron lends vigor to the body and glow to the skin, hence, the glowing and the luster of skin being qualities related to cosmetics, therefore, it has been brought under Entry 36 of 1st Schedule of the Act. Apart from this oral contention of the learned Standing Counsel appearing for respondent/Department, there was no documentary proof, material, literature or text with which the Department could sustain their contention while contending that Himani Sonachandi Chavanprash is a cosmetic and not a drug.

15. If we look at the definition of cosmetics as per Section 3(aaa) which for ready reference is reproduced herein under:

“(aaa) 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”

From the aforesaid definition it can be safely concluded that cosmetic means an article which otherwise is not a product which is edible or can be drunked. It is something which is applied externally over the body and not to be consumed internally.

16. Whereas drugs which stands defined under Section 3(b) of the Drugs and Cosmetics Act which again for ready reference is again reproduced herein under:

“(b) “drug” includes--

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of [vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette.”

A plain reading of the aforesaid definition of drugs would clearly indicate that it is a product which can be internally and externally used. Hence, Himani Sonachandi Chavanprash is one product which is only edible and is not a product which can be used externally.

17. In view of the aforesaid factual aspect of the case and the specific finding of fact given by the STAT, we are of the considered opinion that no strong case has been made out by the learned Standing Counsel for the respondent/Department to interdict the finding so far as the product Himani Sonachandi Chavanprash is

concerned. The challenge to the said finding thus stands answered in the negative affirming the finding given by the STAT.

18. Next we proceed to decide the characteristics of “Himani Boroplus Antiseptic Cream”. The very name of the product i.e. Himani Boroplus Anticeptic Cream by itself denotes that it is no ordinary cream or a cosmetic cream. Rather is a cream which has antiseptic composition and as such is a medicine or a drug under Entry 35 of 1st Schedule of the Act. Another aspect which needs appreciation is the fact that the product as such is not any of those body creams or lotions with medicated composition; rather, it is fully medicated product in the form of a cream. Hence, it would not fall under the purview of Entry 36 of 1st Schedule of the Act. The said product “Himani Boroplus Antiseptic Cream” while it was being applied for getting the license was required to reflect the composition and the books of reference under the ayurvedic literature with specific page numbers and chapters dealing with the same. From the details so furnished with the Government agency while obtaining license; the products, composition and book of reference was reflected, which for ready reference is reproduced herein under:

| Composition | Percentage | Books ref. With Pg.No. |
|--|-------------------|--|
| 1. Extract of Chandan (Santalum album) | 1.0 | Bhava Prakash (189) Raj Nighantu (397) Charak Samhita (62) |

| | | |
|--|---------|--|
| 2. Extract of Tulasi (<i>Occimum Sanctum</i>) | 0.4 | Raj Nighantu (327) Bhava Prakash (509) |
| 3. Extract of Kapoor Kachari (<i>Hedychium spicatum</i>) | 1.5 | Ayurved Samgraha (151) Charak Samhita {Su.4/30 (65), 4/37(67)} Bhava Prakash (247) |
| 4. Extract of Nimba (<i>Azadirachta indica</i>) | 1.0 | Bhava Prakash (329) Charak Samhita {Su.4/14(62)} |
| 5. Extract of Haridra (<i>Curcuma longa</i>) | 0.3 | Bhava Prakash (115) Bangasen Samhita (473-474) Ayurved Samgraha (137) Brihannighantu Ratnakara (Sha) (158) The Ayurvedic Pharmacopoeia of India (45) |
| 6. Extract of Yastimadhu (<i>Glycyrrhiza glabra</i>) | 0.3 | Charak Samhita {Su. 4/5 (60)} Bhava Prakash (65) The Ayurvedic Pharmacopoeia of India (127) |
| 7. Extract of Ghrit Kumari (<i>Aloe barbedensis</i>) | 1.0 | Bhava Prakash (419) Charak Samhita (69) |
| 8. Extract of Ushir (<i>Vetiveria zizinioides</i>) | 0.5 | Raj Nighantu (331) Bhava Prakash (239) Bhaisajya Ratnavali (596) Charak Samhita (68) |
| 9. Jasad Bhasma (Zinc oxide) | 2.5 | Dhanvantari Nighantu (117) Ayurved Samgraha (298) |
| 10. Tankan Amla (Boric Acid) | 0.8 | Dhanwantari Nighantu (74) Brihannighantu Ratnakara (Sha) (177) Ayurved Samgraha (218) Rasatarangini (318) |
| 11. Hiravi (Talc) (<i>Dugha pashana</i>) | 11.0 | Rasatarangini {11/233 (282)} Ayurvedic Formulary of India Part I (237) Ayurvediya Rasashastra (677) |
| 12. Surasar (Alchahol) | 0.7 v/w | Dhanwantari Nighantu (222) Charak Samhita {Su. 27 (392) 25/40(319)} Ayurved Samgraha (263) Sushruta Samhita Sutra (45/148) Bhava Prakash (785-786) Bada Nigraha (36/45 (168)} |
| 13. Incorporated in a suitable ointment | Q.S. to | |

| | | |
|---|------|--|
| vehicle with lanolin, waxes, paraffin oil and odoriferous substances. | 100% | |
|---|------|--|

19. Further from the percentage of various ayurvedic products used in manufacturing of the same would clearly reflect that it is the percentage of ayurvedic product with medicinal value which is predominant in the said antiseptic cream. In addition to the aforesaid facts, there is no material collected by the State authorities or for that matter the Department in particular to show that the product in question i.e. “Himani Boroplus Antiseptic Cream” does not have medicinal value as claimed by the petitioner/assessee.

20. What is also to be appreciated at this juncture is that the said cream under no circumstances can be brought or treated as a cosmetic. It can only be used for the medicinal value that it has and it cannot be used as an ordinary facial or a body cream except for the purpose for which it has been manufactured and sold. It also is not a product which is otherwise capable of being used as a cosmetic or a toiletry product. Neither can it be brought within the purview of medicated goods as the medicated goods are those which are used otherwise than as medicines with its added incidental medicinal properties, for example medicated shampoo, soap, hand wash etc. etc. As has been reflected in the rapper of the product/label of the product, it is preventive in nature and has

curative and healing ayurvedic ointment and it is prescribed for dry skin diseases, cuts, burns, minor skin burns, wounds, chapped skins, furuncle impetigo and intertrigo. All of which by itself establish that it is not a cosmetic product or a toiletry product. Even the STAT has accepted the product to be having curative effect along with it being a healing ayurvedic ointment for curing the aforementioned skin disorders.

21. For the aforesaid reasons, we are of the considered opinion that the finding given by the STAT is a well-reasoned finding which does not warrant interference as no substantial material could be brought on record either before the authorities concerned or before this Court so as to disprove the findings given by the STAT. Thus, for the aforesaid reason also, the challenge by the Department so far as the finding given by the STAT stands negated.

22. The next product, the finding of which has been challenged by the State Government and its Department is the Himani Boroplus Prickly Heat Powder. However, perusal of the Tax Revision Case and the documents attached therein does not show any strong resistance by the State to the findings given by the STAT so far as the product “Himani Boroplus Prickly Heat Powder” is concerned. For ready reference, the relevant portion of the findings given by STAT in respect of the said product is again reproduced herein under:

“In order to decide whether this product covers under other clause (a) or clause (c) of Entry 37, it is to be seen whether Boroplus Prickly Heat powder is covered, described or specified in any other entries of the I Schedule. The learned State Representative submitted that this product is covered under Item vix. ‘Cosmetics and Toilet Preparations’. According to him it comes under face powders and also personal deodorants. He submitted that the containers of this prickly heat powder contains the pictures of flowers which are generally associated with beauty cosmetic and on the container it is written as “it cures body odour” and the powder is a white talcum powder with sweet smell and that the dosage details are not mentioned in the booklet furnished by the appellants it is described as deodorized agent and all those characteristics clearly indicated that this prickly heat powder is cosmetic. As seen from the literature furnished in the form of booklet in respect of this prickly heat powder by the appellants, the appellants declared the following ingredients and its action as follows:

| <u>INDIAN NAME OF THE INGREDIENT</u> | <u>ACTION</u> |
|---|---|
| 1) Yavanala Satva | Refrigerant and cures pimples. |
| 2) Jasad Bhasma | Mild, soothing astringent, cures minor skin infections. |
| 3) Shankha Churna | Cures pimples. |
| 4) Tankan Amla | Cures skin related Diseases and boils due to heat. |
| 5) Salicylic Acid | Antiseptic, antifungal. Effective in heat rash and burning sensation. |
| 6) Surasar | Vitalises skin. |
| 7) Tulasi Ka Tel | Antibacterial, Deodorant and antiseptic. |
| 8) Marigold Oil | Antiseptic. |
| 9) Chandan Ka Tel | Prickly heat action, improves glow of skin. |
| 10) Vetiver ka Tel | Refrigerant and fragrant, prevents body odour. |
| 11) Karpoor | Antiseptic, refrigerant. |

12) Pudina Ka Phool

Antiseptic, refrigerant.

As seen from the said ingredients and its actions, it cannot be said that it is a cosmetic. Merely, because it vitalizes the skin and cure body odour and improves glow of the skin, it cannot be said it falls under cosmetic. Curing pimples is a medicinal action. Curing body is also a medicinal activity. Merely, because one of the qualities is to improve glow of the skin it cannot be characterized as cosmetic.

Nextly, it has to be seen whether the prickly heat powder is 'capable of being used' as cosmetic or toilet preparations and thereby falls under exclusion clause (c) of Entry 37 of I Schedule to the Act. As seen from the decision of the Hon'ble Madras High Court in V.C., Ramalingam & Sons and Another v. State of Tamilnadu and others reported in (2002) 127 APSTJ 382, the Legislature of Tamilnadu also brought out similar amendment to the entry relating to the medicine in TNGST Act in order to exclude products 'capable of being' used as creams, hair oils, tooth paste, tooth powders, cosmetics, toilet articles, soaps and shampoos from the entry 'medicines'. The said amendment was challenged before the Hon'ble Madras High Court. The Madras High Court while dismissing the Writ Petition observed as follows:

"This classification does not discriminate against any system of medicine or against any of the licenses. All of them are treated alike. There is no hostile discrimination against ayurvedic medicines or any medicine by reasons of this explanation. It merely carves out all preparations made by licencees holding licenses under the Drugs and Cosmetics Act, 1940 and others, with reference to their dominant user, and subject those preparations to a different rate of tax having regard to that use. The classification so made cannot be said to be arbitrary, or as lacking in any nexus with the objects sought to be achieved. Toothpastes which are used as articles of daily use for cleaning the teeth are not to be taken out of that class only by reason of their ingredients being ingredients prescribed by ayurvedic texts, which also makes it a ayurvedic medicine. Similarly face creams which are meant to protect the skin on the face and which are used by those who wish to take care of the texture of their skin, also do not cease to be face cream by reason of their contents being those prescribed by the ayurvedic texts and such contents, also having medicinal value. The words "capable of being" are required to be construed as, used primarily

as creams, hair oils, tooth pastes, tooth-powders, cosmetics, toilet articles, soaps and shampoos”.

Therefore, the words capable of being used deployed in clause (c) of Entry 37 is to be construed as used primarily. So in the instant case, it has to be seen whether the prickly heat powder is used primarily as cosmetic viz, face powder. We have already observed supra that this prickly heat powder is not meant for use to the face alone and it is meant for use on the entire body to prevent itching of the skin which is considered as a disease of the skin by this Tribunal in the state of Andhra Pradesh vs. Koduri Satyanarayana & Co., Therefore, we are unable to agree with the contention of the learned State Representative that this prickly heat powder is capable of being used as cosmetics or toilet preparations. Thus, this product prickly heat powder does not fall under either clause (a) or (c) of Entry 37. As it is found supra, that this product satisfies the definition of Sec.3 of Cosmetics and Drugs Act, it falls under Entry 37 of I Schedule to APGST Act and it is to be taxed only as product falling under Entry 37.

23. The Hon'ble Supreme Court in the case of **Nycil Prickly Heat Powder in Heniz India LTD vs. State of Kerala**¹ upheld the judgment of the Kerala High Court² and classified it as a medicated talcum powder, a classification that is primarily rooted in the product's composition, which includes medicinal ingredients. However, despite these medicinal properties, the specific legislative language of the concerned states, namely Kerala and Tamil Nadu, classifies such products as cosmetics. This classification highlights the dualistic nature of Nycil Prickly Heat Powder, which combines therapeutic properties such as zinc oxide & boric acid and with cosmetic usage.

¹ 2023 SCC Online SC 561

²2009 (245) E.L.T. 71 (Ker.)

24. On the other side Himani Boroplus Prickly Heat Powder also contains medicinal ingredients in a way that is similar to Nycil, such as zinc oxide (Jasad Bhasma), boric acid (Tankan Amla) and salicylic acid, a beta hydroxy acid. However the Himani Boroplus Prickly Heat Powder could potentially be classified differently due to the extra ingredient that is salicylic acid which makes the product drug. In particular, it could be classified as a drug, indicating a primary use for therapeutic or prophylactic purposes.

25. This product is not merely another addition to the endless array of cosmetic skincare products available on the market; it is meticulously formulated product that has been designed with a specific purpose: to treat and heal skin conditions. This significant distinction is primarily due to the potent medical properties of its active ingredients, which include zinc oxide, boric acid, and salicylic acid. On the other hand, Nycil powder is also designed for skin health and comfort, with its primary component being talc, known for its absorbent properties. Nycil is also medicated with Zinc Oxide and may contain other ingredients depending on its variant, such as cooling agents or additional medicinal ingredients. Zinc oxide (Jasad Bhasma) a primary ingredient in the formulation, is a compound known for its antiseptic properties. This ingredient is instrumental in preventing skin infections and soothing irritated skin, making it a crucial component in skincare products.

Additionally, zinc oxide creates a protective barrier on the skin's surface, effectively repelling unwanted moisture and fostering an environment conducive to the healing process. This feature is particularly beneficial in hot and humid climates, where excessive sweating can lead to skin discomfort and irritation.

26. Further enhancing the therapeutic efficacy of Boroplus Prickly Heat Powder is boric acid (Tankan Amla). This compound is known for its antifungal, antiviral, and antiseptic properties, enabling it to combat a range of skin conditions. Boric acid's ability to treat minor cuts, burns and scratches underscores the product's medicinal nature and its alignment with pharmaceutical products rather than merely cosmetic ones.

27. The inclusion of salicylic acid in the product's formulation fortifies its medical potential. Salicylic acid, a beta hydroxy acid, is a common ingredient in many skincare products due to its ability to exfoliate the skin and treat conditions like acne. By promoting the shedding of dead skin cells and preventing pore clogging, salicylic acid contributes significantly to the overall health and appearance of the skin.

28. Further the combination of these ingredients imbues Himani Boroplus Prickly Heat Powder with a distinct therapeutic quality not commonly found in ordinary cosmetics. The product's ability to

alleviate discomfort, promote healing and protect the skin from further damage aligns it more closely with medicinal products. This is further corroborated by the fact that the powder is manufactured under a drug license, ensuring adherence to stringent quality and safety standards that may not apply to regular cosmetic products. Therefore, it is evident that due to the distinct medical benefits and therapeutic potential it offers, Boroplus Prickly Heat Powder rightfully belongs in the realm of drugs, rather than cosmetics.

29. Considering the presented arguments and the discussion has thoroughly examined the classification of Himani Boroplus Prickly Heat Powder in the context of the Schedule 1st of APGST Act. This product, unlike Nycil Prickly Heat Powder has predominant medicinal elements which has a soothing and protective effect on the skin, which can be attributed to its cosmetic nature. It only contains medicinal ingredients such as Zinc Oxide, Boric Acid and Salicylic Acid, which gives it therapeutic and prophylactic properties, making it more than just a cosmetic product.

30. Taking into account the decision of the Allahabad High Court in the case of **Himani Ltd. v. Comm. Of Commercial Tax**³ and the common parlance test, it is clear that the public perceives products like Himan Boroplus Prickly Heat Powder as medicinal or

³ 2011 (263) E.L.T. 335 (All.)

Ayurvedic products rather than mere cosmetics. Furthermore, the Advance Ruling sought by the assessee before the Guwahati Commercial Taxes Department, which was later upheld by the Gauhati High Court in **Emami Limited and Another vs. State of Assam and Another**⁴ adds more weight to this classification.

31. In view of these observations and legal precedents, it is concluded that Himani Boroplus Prickly Heat Powder has been rightly classified under Entry 37 in Schedule 1st of the APGST Act. This classification acknowledges the product's medicinal properties and its role in health and healing. Conversely, the product should not be classified under Entry 36 as 'Cosmetics or Toilet Preparations' in the same schedule of the Act. This is because such a classification would downplay the product's medicinal attributes and potentially misrepresent its purpose and use to the public.

32. Thus, the challenge to the said finding of the STAT does not have any force or strength either in the form of any cogent material brought on record or in the submissions that they have tried to make to interfere with the findings of the STAT. The challenge to the findings of the STAT so far as Himani Boroplus Prickly Heat Powder not being a drug under Entry 37 Schedule 1st of the Act

⁴ 2015 SCC Online Gau 818

fails and is rejected. The said contention of the Department also stands negated.

33. As a consequence, the Tax Revision Case Nos.155, 156, 166, 169 and 211 of 2004 filed by the respondent/Department being devoid of merits, deserves to be and are accordingly rejected.

34. Now we proceed to decide the Tax Revision Cases filed by the assessee i.e. Tax Revision Case Nos.193, 188 and 187 of 2004 filed by M/s.Himani Ltd. for the assessment years 1996-1997, 1997-1998 and 1998-1999 and Tax Revision Case Nos.182, 183 and 192 of 2004 filed by M/s.Emami Ltd., the sister concern of M/s.Himani Ltd. for the assessment years 1998-1999, 1999-2000 and 2000-2001.

35. At the outset, the learned counsel for the petitioner/assessee appearing for the two assessee companies submitted that they do not challenge the assessment made by the Department so far as the product Himani Nirog Dant Powder Lal. They are not pressing the assessment so made by the Department bringing the said product "Himani Dant Powder Lal" within the ambit of Entry 36 i.e. the cosmetic product in 1st Schedule of the Act.

36. On account of giving up of the challenge to "Himani Nirog Dant Powder Lal" product, the only two products which now remains to be considered and adjudicated upon are (1) Himani

Navaratan Oil and (2) Himani Gold Turmeric Ayurvedic Cream. The STAT in the impugned order has given findings of both these products being cosmetic product which falls under Entry 36 of 1st Schedule of the Act. Whereas the contention of the learned counsel for the petitioner/assessee is that both these products are in fact drugs as is reflected under Entry 37 of 1st Schedule of the Act. The contention of the learned counsel for the petitioner/assessee in so far as Himani Navaratan Oil is concerned, was that, the product is a medicinal product and is prescribed for keeping the head cool, relieve headache, helpful in providing sound sleep, effective memory aid, it tones up body muscles, removes tiredness, useful in minor burns and cuts and also prevents premature hair fall. None of the actions as mentioned in the label of the product cater to the definition of a cosmetic product or a toiletry product.

37. It was the contention of the learned counsel for the petitioner/assessee that even the license for the product was obtained as an ayurvedic product sanctioned by the Drug Controller after thorough scrutiny of its composition with its intended cure of headache, reduction in burns, improving blood circulation and also for improving the hair growth. According to the learned counsel for the petitioner/assessee, it is an ayurvedic product and is not perfumed hair oil with medicinal value. All the

ingredients and compositions which are used for manufacturing of the said product were found in ayurvedic texts.

38. Learned counsel for the petitioner/assessee relied upon a decision of the Allahabad High Court in respect of the very same products of the assessee's company which the Allahabad High Court has accepted it to be products which otherwise fall under Entry 37 and not under Entry 36 of 1st Schedule of the Act. He also took the Court to the compositions of the product and reference to the ayurvedic texts in respect of the various products involved in the making of the said Himani Navaratan Oil. For ready reference, the composition and reference to these ayurvedic texts are reproduced herein under:

| Composition | 100 ml contains | Books ref. With Pg.No. |
|--------------------|------------------------|--|
| 1. BENAMUL | 0.05 gm | ❖ Bharatiya Banousadhi, Vol. V, P.No. 1293-1294. ❖ Bhava Prakash, Vol. I, P.No. 239. |
| 2. LATA KASTURI | 0.1 gm | ❖ Chiranjib Banousadhi, Vol. VII, P.No. 45. ❖ Banousadhi Chandrodaya, Vol. VI, P.No. 45. ❖ Bhava Prakash, Vol. I, P.No. 184. |
| 3. KAKOLI | 0.1 gm | ❖ Banousadhi Chandrodaya, Vol. II, P.No. 112. ❖ Bhava Prakash, Vol. I, P.No. 62. |
| 4. SAILAJA | 0.2 gm | ❖ Wealth of India, Vol. VI, P.No. 81-90, ❖ Bhava Prakash, Vol. I, P.No. 242. |
| 5. GATELLA | 0.2 gm | ❖ Dravyaguna, P.No. 124. |

| | | |
|------------------------------------|---------|---|
| 6. MURAMANSI | 0.25 gm | ❖ Dravyanguna, P.No. 121, ❖ Ayurveda Pradip, P.No. 132. |
| 7. KUNCH | 0.25 gm | ❖ Chiranjib Banousadhi, Vol. III, P.No. 271-272. ❖ Bhava Prakash, Vol. I, P.No. 356. |
| 8. AMLA | 1.0 gm | ❖ Bharatiya Banousadhi, Vol. IV, P.No.1076-1077 ❖ Bhava Prakash, Vol. I, P.No. 10-11. |
| 9. MUSTHA | 0.05 gm | ❖ Bhava Prakash (244) ❖ Charak Samhita {Su. 4/3 (60)} |
| 10.KARPUR (Camphor) | 0.05 gm | ❖ Chiranjib Banousadhi, Vol. III, P.No. 119-126. ❖ Ayurveda Samgraha, P.No. 143, 276, 468, 475, 514, 585, 1224. ❖ Bhava Prakash, Vol. I, P.No. 174. |
| 11.PUDINA KA PHOOL (Menthol) | 2.3 gm | ❖ Brihatnighantu Ratnakara, P.No. 71. ❖ Banousadhi Chandrodaya by Sri Chandraraj Bhandari Vol. VI, P.No. 136-137. |
| 12.GANDHA PATRA | 0.2 gm | ❖ Ayurveda Samgraha, P.No. 700. |
| 13.KAPOOR KACHRI | 0.2 gm | ❖ Indian Materia Medica] by K.M. Nadkarni, Vol. I, P.No. 608, ❖ Bhava Prakash, Vol. I, P.No. 248. |
| 14.GULAB PHOOL | 0.05 gm | ❖ Indegenous Drugs of India by R.N. Chopra, P.No. 238, ❖ Bhava Prakash, Vol. I, P.No. 489. |
| 15.KESUT | 0.05 gm | ❖ Indian Medicinal Plants, Vol. II, P.No. 1361-1363. ❖ Bhava Prakash, Vol. I, P.No. 430. |
| 16.BRAHMI | 0.01 gm | ❖ Chiranjib Banousadhi, Vol. I, P.No. 24. ❖ Indegenous Drugs of India, by R.N. Chopra, P.No. 352 ❖ Bhava Prakash, Vol. I, P.No. 462. |

| | | |
|---|--------------------|---------------------------|
| 17.SURASAR (Alchahol) | 0.5 ml | ❖ Arka Prakash, P.No. 81. |
| Incorporated in Vegetable/mineral oil base with odouriferous substances, preservatives etc. | Q.S. to 100 ml. | |

It was based upon these compositions and reference to the ayurvedic texts that the license was given as an ayurvedic drug under the Drugs and Cosmetics Rules, 1945.

39. Enough literature and materials in respect of its curing capacity as an ayurvedic medicine was made available with the Department. Learned counsel for the petitioner/assessee also relied upon the decision of the Tamil Nadu Sales Appellate Tribunal, wherein the Tamil Nadu Sales Appellate Tribunal has distinguished Navaratan Oil from the judgment of **Commissioner of Sales Tax vs. Raj & Co.**,⁵ and had not accepted the said view in the said judgment holding that Navaratan Oil has its therapeutic values such as relieves stress, sound sleep, effective memory aid, it tones up body muscles, removes tiredness and premature hair fall and it is not anywhere advertised as an hair oil. The said judgment of the Tamil Nadu Sales Appellate Tribunal was not challenged further by the Department.

⁵ (1986) 62 STC 76

40. According to the learned counsel for the petitioner/assessee, it was pure ayurvedic oil and under no stretch of imagination can it be termed as a perfumed hair oil. Rather, it is never sold in the market as hair oil and the said oil is an ayurvedic medicine and not medicated goods. It was contended that medicated goods are those which are intended to be used otherwise than as medicines. For example; shampoos, soaps, hand wash with medicinal contents in it. Medicated goods are those where incidental medicinal properties are incorporated in small quantity and the product needs to be otherwise sold for the very same purpose for which it was otherwise manufactured and sold. Thus the finding of the STAT so far as Navaratan Oil being a cosmetic and not a Drug is liable to be set aside and it is ordered accordingly.

41. Now we come to the next product i.e. the Himani Gold Turmeric Ayurvedic Cream. The petitioner/assessee has manufactured the same and is marketing the same claiming it to be highly effective for curing cracked skins, pimples, boils etc. None of these actions as mentioned in the label of the product cater the definition of cosmetics or toiletry product. As in the other products, it was the contention of the learned counsel for the petitioner/assessee that Himani Gold Turmeric Ayurvedic Cream also was a product which has been licensed as an ayurvedic drug by the Drug Controller based on the composition and these

compositions being from the ayurvedic texts with the intended cure for skin diseases and also as an anti-inflammatory cream, it is claimed to be a cream which helps in healing the wounds, cure heat boils, pimples, antiseptic and anti-microbial etc. For ready reference, the composition and the reference of the ayurvedic texts in respect of the ayurvedic products used in the manufacture of the said cream is hereby reproduced:

| Composition & Book Reference | Percentage | Books reference with page number |
|---|-------------------|--|
| Extract of: Turmeric (HARIDRA) | 16% | Ayurveda Sangraha – 137 Bharatia Banousadi – IV 1158 – 60 By Dr. K.P.Biswas |
| Sandal Wood (CHANDAN) | 6% | Ayurveda Sangraha – 144 Bharatia Banousadi – IV 1025 – 31 Chiranjib Banousadi – I 174 |
| Vativart (BENAMUL/USHIR) | 0.5% | Ayurveda Sangraha – 151 Bharatia Banousadi – V 1292 – 94 Chiranjib Banousadi – III 191 |
| Saussuroa Lappa (COSTUS/KUSTHA) | 0.5% | Ayurveda Sangraha – 1073 Bharatia Banousadi – III 650 Chiranjib Banousadi – VI 254 – 59 |
| Mehandi (LAWSONIA/MADANIKA) | 3% | Bharatia Banousadi – II 490 Chiranjib Banousadi – I 182 |
| Tulsi (Ocimum) | 3.3% | Ayurveda Sangraha – 180 Bharatia Banousadi – IV 926 – 33 Chiranjib Banousadi – I 73 |
| Ghritakumari (ALOE) | 0.2% | Ayurved Sangraha 172 Nadkarni – VOL. I 76 Drabyagun 187 |
| Darwantari (BERBERIS) | 0.5% | Indegenous D of I 289 Bhar. Banousadi I 42 Drabyagun 76 |

| | | |
|-----------------|------|--|
| TURMERIC Powder | 0.2% | Ayurveda Sangraha 137 Bharatia Banousadi IV 1158 – 60 By Dr. K.P.Biswas |
|-----------------|------|--|

42. What is necessary to be appreciated at this juncture is that, from the rapper in which the cream is sold, very emphatically highlights it as an ayurvedic medicine. The rapper also clearly indicates that the cream is highly effective for cracked skins, pimples, boils and numerous other skin blemishes. Nowhere did they in the rapper claim it to be a cosmetic product or a product which could enhance the complexion or fairness. The licensing authority having granted license for the said product as an ayurvedic drug, the manufacture, sale and distribution of the product as a drug and not a cosmetic is established and it is being marketed only as a drug and not as a cosmetic. Moreover, it cannot be used as a cosmetic unless there is a license for it to be manufactured and marketed as a cosmetic or a toiletry product. The petitioner/assessee has by now made available all the requisite documentary proofs with the Department for declaring the product as a drug, particularly, in the light of the Revenue having utterly failed to classify it as a cosmetic.

43. Though the learned Standing Counsel for the respondent/ Department contended hard to persuade this Bench to hold that the two products i.e. the Himani Navaratan Oil and Himani Gold

Turmeric Ayurvedic Cream to be cosmetics, in the absence of any strong material available, the findings given by STAT holding it to be a product to be brought within the purview of Entry 36 of 1st Schedule of the Act does not seem to be proper, legal and justified for the grounds and reasons mentioned in the preceding paragraphs, rather it is a case where there two products are products which would be one under Entry 37 of the 1st Schedule of the Act.

44. The Tax Revision Cases filed by the petitioner/assessee i.e. Tax Revision Case Nos.193, 188 and 187 of 2004 filed by M/s.Himani Ltd. and Tax Revision Case Nos.182, 183 and 192 of 2004 filed by M/s.Emami Ltd. deserves to be and are accordingly allowed. Accordingly, the order of the STAT is set-aside/quashed.

45. In the result, the Tax Revision Case Nos.155, 156, 166, 169 and 211 of 2004 are rejected and the Tax Revision Case Nos.193, 188, 187, 182, 183 and 192 of 2004 stands allowed. No costs.

46. As a sequel, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 14.06.2024

Note: LR Copy to be marked.

B/o.GSD