

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**EXCISE Appeal No. 10218 of 2013**

(Arising out of OIA-CCEA-SRT-II/SSP-85/U/S/35A-3--FINALORDER- dated 26.10.2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

**LYKA LABS LIMITED**

PLOT NO. 4801/B, GIDC,  
ANKLESHWAR-GUJARAT

**...Appellant**

*VERSUS*

**C.C.E. & S.T.-SURAT-II**

NEW C.EX BUILDING...OPP. GANDHI BAUG,  
CHOWK BAZAR,  
SURAT, GUJARAT-395001

**...Respondent**

**APPEARANCE:**

Shri S.P. Sheth, Advocate appeared for the Appellant

Shri R.K. Agarwal, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 11925 /2023**

DATE OF HEARING: 31.08.2023

DATE OF DECISION: 12.09.2023

**RAMESH NAIR**

The issue involved in the present appeal is that whether the product manufactured by the appellant in the name of Sensur Rubefacient and Herbyl Skin Ointment are ayurvedic medicament classifiable under 3003.30 or P&P medicament (other than medicament) classifiable under 3003.39 to the first schedule to the Central Excise Tariff 1985.

2. Shri Shailesh P. Sheth, learned Counsel appearing on behalf of the appellant submits that the product is manufactured out of Ayurvedic ingredients which are specified in Ayurveda Grantha. The product is sold as Ayurvedic medicine. The Drug Authority has given license to these medicines as Ayurvedic medicine that the goods are marketed as Ayurvedic medicine, therefore, the product is clearly an Ayurvedic

medicine and the appellant have correctly classified the goods. It is his submission that merely because some of the ingredients which are other than active ingredients like preservatives, excipients, binding agent carriers or vehicle or fillers etc., even not prescribed in Ayurvedic text would not render the product P or P medicament (other than Ayurvedic medicament) classifiable under said heading 3003.10. Only active ingredient should be Ayurvedic which is not in dispute in the present case. He submits that on this fact, it is a settled legal position that the product is classified under ayurvedic medicament. In support he placed Reliance on the following judgments.

- Amrutanjan Ltd. 1995 (77) ELT 500 (SC)
- Naturalle Health Products P Ltd. 2003 (158) ELT 257 (SC)
- Medopharm 2005 (189) ELT 33 (T. Chennai)
- Ishaan Research Lab Pvt. Ltd. 2001 (137) ELT 293 (T. Delhi)
- CCE vs Ishaan Research Lab Pvt. Ltd. 2008 (230) ELT 7 (SC)
- Himani Ltd. 2011 (263) ELT 335 (All.)
- Herbal Products 2002 (146) ELT 126 (Tri. Bang.)
- Ma Core 2004 (174) ELT 228 (Tri. Mum.)
- Seagull Drugs 2013 (291) ELT 284 (T. Delhi)
- Proctor & Gamble India Ltd. 2004 (174) ELT 409 (T. Delhi)
- DIL Ltd. 2010 (259) ELT 722 (Tri. Amd)
- CCE vs Sharma Chemicals Works 2003 (154) ELT 328 (SC)
- Meghdoot Gramodyog Sewa Sansthan 2004 (174) ELT 14 (SC)

He further submits that in the present case in respect of same product, the Department had finalized the assessment considering the product in question as Ayurvedic medicament, therefore, no further demand can be raised. He further submits that even the use of non active ingredients which is the sole basis of department to classify the product as other than Ayurvedic medicine, are also find place in Ayurvedic Grantha,

therefore, on that ground, it cannot be decided that product is not Ayurvedic medicine.

3. Shri R.K. Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that entire case of the department for classifying the medicament under P or P medicament (other than Ayurvedic Medicament) is that the appellant have used some ingredients such as Boric acid, Lanoline Anhydrous, White Soft Paraffin, Essence of Jasmine, Salicyclic Acid, and Bees wax which are not the Ayurvedic ingredients, therefore the product is not manufactured with all the Ayurvedic ingredients. We find that in order to classify a product as Ayurvedic medicament, there is no criteria or conditions provided under the Central Excise Tariff Act, however on this issue much water has flown in various judgment delivered by the Hon'ble Supreme Court which are cited Supra by the appellant in their submissions. From the analysis of all the judgments, we are of the prima facie view that to classify medicament as Ayurvedic medicament, the following criteria to be satisfied.

1. The medicament should be manufactured out of Ayurvedic ingredient specified in Ayurvedic Grantha or Ayurveda authoritative books.
2. The medicament is sold as ayurvedic medicine in the trade parlance etc.

In the present case some of the ingredients such as Boric acid, Lanoline Anhydrous, White Soft Paraffin, Essence of Jasmine, Salicyclic Acid, and Bees wax have been used were claimed by the department as other than ayurvedic ingredients. The claim of the appellant is that firstly these are not active ingredients, whereas the same are in the nature of

preservatives, excipients, binding agent, carrier or vehicle or filler etc., therefore, even though these products are other than ayurvedic ingredients, if the active ingredients are ayurvedic still the medicament is classifiable as ayurvedic medicament. We prima facie agree with the appellant's submission, however all the said ingredients whether are active ingredient or otherwise has not been examined properly. Moreover, the appellant's claim that even these ingredients are also found place in Ayurvedic, this fact is also not examined properly by the adjudicating authority. Since the entire case of the department is based on the contention that some of the ingredients which as per the appellant are non-active ingredients are other than Ayurvedic, the details of ingredients whether they are active or non-active and whether they are also covered under Ayurvedic authoritative books is very important to examine. We are therefore of the considered view that the matter needs to be reconsidered in the light of the above observation and also by considering the various Supreme Court judgments<sup>0</sup> cited by the appellant. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 12.09.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Neha