
(1962) 09 SC CK 0013

In the Supreme Court Of India

Case No : ?Writ Petition (Civil) 344 of 1961

Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd.
and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-09-1962

Acts Referred:

Constitution of India, 1950 — Article 277, 32
Government of India Act, 1935 — Section 19(2)
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2, 3
West Bengal Excise Rules, 1993 — Rul

Citation : AIR 1963 SC 622 : (1963) 2 AnWR 118 : (1963) 3 SCR 957

Hon'ble Judges : B. P. Sinha, C.J;S. J. Imam, J;N. Rajagopala Ayyangar, J;K. Subba Rao, J;K. N. Wanchoo, J;J. C. Shah, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Wanchoo, J.—These six petitions under Art. 32 of the constitution raise a common point and will be dealt with together. The main question raised in all these petitions is whether the State-Governments are entitled to tax the three Ayurvedic preparations, namely Mirtasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura, which are manufactured by these petitioners, under the various Excise Act in force in the respective States. Further points were raised in the petitions as regards the validity of the restrictions imposed in the matter of the import, export, possession and sale of these three Ayurvedic preparations. But the learned counsel for the petitioners stated before us that he was not pressing any other point except one viz., whether the various State-Governments could tax these three Ayurvedic preparations under the various Excise Acts in force in the States concerned. We propose therefore to deal with this point only in the present cases.

2. The case of the petitioners is briefly this. They carry on business as manufacturers of medicinal preparations according to the Ayurvedic system of

medicines and among the Ayurvedic medicines manufactured by them are these three preparations. These Ayurvedic preparations are manufactured by the process of fermentation and distillation in accordance with the Ayurvedic system of medicine following the formula in standard books known as Ayurvedic Sangraha, Bhaisajya Ratnabali and Arka Prakash. These books, according to the petitioners, contain extracts from all authoritative ancient Ayurvedic treatises accepted throughout India and are in vogue as Ayurvedic pharmacopoeias in the various States. Though the three preparations have three different names they are in reality only one medicine and are prepared according to a single formula in these books. The petitioners aver that these three preparations are manufactured in accordance with the standard Ayurvedic pharmacopoeias in vogue in various States and are efficacious amongst others in the following diseases :-

- (a) in typhoid fever (Sannipatik Jwara) during collapsed condition;
- (b) in cholera;
- (c) in case of loss of appetite to increase power of digestion;
- (d) In rheumatism, sciatica etc., and
- (e) to remove weakness, impart strength and vigour and also as a general tonic and restorative for convalescent patients.

Before the Constitution came into force, all these three preparations were liable to Provincial excise duty under item 40 of List II of the Seventh Schedule to the Government of India Act, 1935. The Constitution however made a change in the three legislative Lists with respect to excise and under item 51 of List II of the Seventh Schedule the States have the power to levy excise duty on alcoholic liquor for human consumption and on opium, Indian hemp, and other narcotic drugs and narcotics but not including medicinal and toilet preparations containing alcohol or any substance like opium etc. Further, under item 84 of List I of the Seventh Schedule the Union has the power to impose duties of excise on tobacco and other goods manufactured or produced in India except (i) alcoholic liquors for human consumption and (ii) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance like opium etc. Thus the Constitution took away the power of the States to impose duties of excise on medicinal and toilet preparations containing alcohol or any substance like opium etc. and give that power to the Union. However, Art. 277 of the Constitution provided that "any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law". In view of this Article, the State Governments continued to levy excise

duties on medicinal and toilet preparations containing alcohol, opium, etc., till 1957 as Parliament had made no law to the contrary till then. In 1955, however Parliament passed the Medicinal and Toilet Preparations (Excise Duties) Act, No. 16 of 1955, hereinafter referred to as the Act) which was brought into force from April 1, 1957. We are in the present case concerned only with medicinal preparations and a "medicinal preparation" is defined in s. 2(g) of the Act as including "all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human being or animals." Section 3 provides for levy of duties of excise at the rates specified in the Schedule, on all dutiable goods manufactured in India. Section 19 gives power to the Central Government to make rules to carry out the purpose of the Act and in particular s. 19(2)(xx) gives power to notify in the official gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item of the Schedule or for regulating their manufacture, transport and distribution". The Schedule (omitting the Explanations which are immaterial for present purposes) prescribing the duty is in these terms :-

3. The Central Government framed Rules under the Act in 1956 and the administration of the Act and the Rules was entrusted to State-Governments. A list of medicinal preparations, which were capable of being used as ordinary alcoholic beverages, was also published along with the Rules and r. 65 provides that "until a standard Ayurvedic pharmacopoeia has been evolved by the Central Government, the pharmacopoeias that are in vogue in the various States shall be recognised as standard Ayurvedic pharmacopoeias". The contention of the petitioners is that these three Ayurvedic preparations conform to the definition of medicinal preparations given in s. 2(g) of the Act. Further, in the Schedule to the Rules, Mritasanjibani Sura was listed as a medicinal preparation in 1957. Further in 1958, Mritasanjibani and Mritansanjibani Sudha were also added under the head "medicinal preparations" in the Schedule to the Rules as the three are really one and the same medicine. The Act and the Rules came into force from April 1, 1957 in accordance with the provision of S. 1(3) of the Act, which gives power to the Central Government to enforce the Act on such date as it may, by notification in the official gazette, appoint. The petitioner's case is that thereafter they began to pay duties of excise on these three medicines under item 1 in the Schedule to the Act at the rate of Rs. 17.50 nP. per gallon of the strength of London proof spirit, as these preparations were considered medicinal preparations containing alcohol which were prepared by distillation or to which alcohol was added and which were capable of being used as ordinary alcoholic beverages. This continued till August 1960 when the Central Government purporting to act under s. 19 of the Act amended the Rules and omitted from the Schedule to the Rules two of the three preparations, namely, Mritasanjibani and Mritasanjibani Sudha. Further in December, 1960, the Central Government again amended the Rules and omitted from the Schedule to the Rules the third preparation (namely, Mritasanjibani Sura). Consequently, various State-Governments began

demanding duties of excise on these there preparations at rates which are much higher than the rate of Rs. 17.50 nP. prescribed in the Schedule to the Act. The contention of the petitioners is that on the coming into force of the Act, the levy of excise duties on these medicinal preparations fell within item 84 of List I, with the result that thereafter it is not open to State-Governments to levy duties of excise on these preparation in accordance with the various Excise Acts in force in the States. It is further contended that if these preparations in fact come within the definition of "medicinal preparation" in s. 2(g) of the Act and are covered by the Schedule to the Act, the omission of these three preparations from the list attached to the Rules would make no difference and would not give power to the State-Governments to tax them under the various Excise Acts in force in the States concerned.

4. The petitioners further say that though r. 68 of the Rules provides for a Standing Committee to advise the Central Govt. on all matters connected with the technical aspects of the administration of the Act and the Rules, and in particular, on the question whether (i) a particular preparation is entitled to be treated, or to continue to be treated, as a genuine medicinal or toilet preparation for the purposes of the Act, and (ii) if so, whether it should be treated, or continue to be treated, as a restricted or an unrestricted preparations, it was not open to the said Committee even if it was consulted in this matter to advise the Government that these three preparations were not medicinal preparations, if in fact they are medicinal preparations as defined in s. 2(g). It is therefore urged that even if the Central Government acted on the advice of the Standing Committee when it omitted these three preparations from the list appended to the Rules, it had no power to do so if these three preparations are in fact medicinal preparations within the meaning of s. 2(g) of the Act. The petitioners therefore pray for an appropriate writ, direction or order directing the Central Government not to give effect to the notifications of August and December 1960, removing these three preparations from the list appended to the Rules and also for a direction to the State-Governments not to levy duty on these preparations under the respective Excise Acts in force in the various States and prohibiting the State-Governments from collecting duties of excise on the said medicinal preparations in excess of the rates fixed by the Act and to refund the amounts of duty already collected in excess of that rate.

5. The petitions have been opposed by the Central Government and by the various State-Governments concerned. The main counter-affidavit has been filed on behalf of the Central Government and the various State Governments have adopted that counter-affidavit with some additions. The main contention on behalf of the respondents is that these three preparations are not admitted to be "medicinal preparations containing alcohol" within entry 84 of List I, by reason of these preparations not being mentioned in any recognised Ayurvedic pharmacopoeia. It is also not admitted that they are prepared according to the prescribed specifications referred to by the petitioners by utilising the proper ingredients and manufactured according to the recipes or directions given in the

three Ayurvedic text books relied upon by the petitioners. Further, it is denied that these three preparations conform to the definition of s. 2(g) of the Act. It is also not admitted that they are remedies, much less efficacious remedies for any human ailment. It is further urged that the Central Government has been empowered to decide on the advice of the Standing Committee whether any preparation should be treated or continue to be treated as a genuine medicinal and toilet preparation for the purpose of the Act or whether it should be treated or continue to be treated as a restricted or unrestricted preparation. Further, the Central Government can according to the advice of the Standing Committee, amend the Schedule of the medicinal and toilet preparations of restricted category from time to time by notifications and if a particular preparation is found to fall out-side the scope of the Act the State-Governments would be competent to levy duties of excise on it under the Excise Acts in force in the various States. It is contended that the action of the Central Government in omitting these three preparations from the list to the Rules framed under the Act was based on the advice of the Standing Committee which was of the opinion that these were not genuine medicinal preparations. Consequently, they were omitted from the list appended to the Rules under the Act and the Act did not apply to them with the result that the State Governments were free to subject them to duties of excise under the various Excise Acts in force in the various States.

6. The main question therefore falls for consideration in these cases is whether the three preparations are in fact medicinal preparations containing alcohol falling within item 84 List I of the Seventh Schedule to the Constitution, on which item the Act is based and so whether they are medicinal preparations as defined in s. 2(g) of the Act. If they are medicinal preparations as defined therein, they will be governed by the Act and the omission of these preparations from the list appended to the Rules will not make any difference to their being medicinal preparations within the meaning of the Act. Before however we deal with this main question, we may dispose of a contention raised on behalf of the State of Bihar that even if the three preparations are medicinal preparations they will be liable to duty both under the Act as well as under the various Excise Acts in force in the various States. We have already pointed out that under the Government of India Act, 1935, medicinal and toilet preparations were liable to duties of excise under entry 40 of List II of the Seventh Schedule to that Act. Correspondingly under item 45 of List I *ibid* which provides for duties of excise on tobacco and other goods manufactured or produced in India, medicinal and toilet preparations were excepted from that entry. Therefore, till the Constitution came into force the State-Governments had power to levy duties of excise on medicinal and toilet preparations. We have further pointed out that the Constitution has made a change, and medicinal and toilet preparations were excepted from entry 51 of List II of the Seventh Schedule to the Constitution relating to duties of excise leviable by States and were put in entry 84 of List I *ibid* which provides for duties of excise leviable by the Union. However, Art. 277

provides that any taxes or duties etc. which, immediately before the commencement of the Constitution, were being lawfully levied by the Government of any State etc. may, notwithstanding that those taxes, duties etc. are mentioned in the Union List, continue to be levied and to be applied to the same purpose until provision to the contrary is made by Parliament by law. Therefore, so long as Parliament did not make any law relating to medicinal and toilet preparations, the position under the Government of India Act would continue and the States would have the power to continue levying duties of excise on medicinal and toilet preparations to the same extent to which they were levying them immediately before the commencement of the Constitution. In 1955, Parliament passed the Act for levy of duties of excise on medicinal and toilet preparations. This Act was brought into force from April 1, 1957, and the consequence of this enactment was that the power of the States to levy duties any further on medicinal and toilet preparations came to an end in view of Art. 277 of the Constitution. There can in our opinion be no doubt that Art. 277 which saved the power of the States to levy duties of excise etc. which came in the Union List on the passing of the Constitution is no longer applicable as soon as Parliament makes a provision to the contrary. Once therefore a provision to the contrary is made, the saving provided in Art. 277 comes to an end and thereafter the State-Governments cannot continue to levy any duty which they might have been levying by virtue of Art. 277 till provision to the contrary was made. Further, this conclusion which follows from Art. 277 is made perfectly clear by s. 21 of the Act, which provides that "if immediately before the commencement of the Act there is in force in any State any law corresponding to this Act, that law is hereby repealed". The effect of this repeal is that the Excise Acts of the various States under which duty was being levied on medicinal and toilet preparations containing alcohol must be deemed to have been repealed, in so far as they apply to such medicinal and toilet preparations. It is not necessary that the State should have had a separate law for levy of duties of excise on medicinal and toilet preparations, for the repeal in s. 21 of the Act to come into effect. The Excise Acts of the various States were undoubtedly law under which duty was being levied on medicinal and toilet preparations containing alcohol and those Excise Acts must be deemed to correspond to the Act for the purposes of levy of duty on medicinal and toilet preparations and must be held to have been repealed by s. 21 so far as medicinal and toilet preparations were concerned. It is urged on behalf of the State of Bihar that the purpose of the Excise Acts in States was not merely to raise revenue which was a secondary consideration but to regulate the consumption of liquor and for that purpose the various Excise Act of the States Imposed a heavy duty to reduce consumption. Further, it is urged that the purpose of the Act is only to impose duties for venue purposes and it has nothing to do with the regulation of consumption of liquor and reducing such consumption. Therefore, the excise Acts of the various States when they impose duty of excise on medicinal and toilet preparations had two purposes, namely, (i) to raise revenue and (ii) to reduce consumption of liquor, and therefore the Excise Acts of the various States cannot be said to be corresponding law which

has been repealed by the Act which has only one purpose namely raising of revenue. We have not however been able to understand how any purpose behind a fiscal measure can have any relevance on the question of correspondence. Various Excise Acts of the States in so far as they impose duties on medicinal and toilet preparations containing alcohol are fiscal statutes for taxing these preparations. Now, the Act is a fiscal statute for taxing these preparations enacted by Parliament under entry 84 of List I of the Seventh Schedule to the Constitution, and therefore the Excise Acts which were the corresponding taxing statutes for these preparations must be held to be repealed so far as taxation on these preparations is concerned. There can therefore be no doubt that there is correspondence between the Act and the various Excise Acts of the various States in so far as levy of duty on medicinal and toilet preparations is concerned and s. 21 of the Act repeals all the Excise Acts of the States so far as such levy is concerned. There can thus be no question of medicinal and toilet preparations being liable to duty under the Act as well as the various Excise Acts in force in the States. This contention is hereby rejected.

7. The next question is whether these three preparations are medicinal preparations as defined in the Act in s. 2(g). The definition is an inclusive one and includes "all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals". According to the West Bengal Excise Rules, which deal with the manufacture of these three preparations, it appears that the preparations are to be made according to the recipe and direction laid down in Arka Prakash, Ayurved Sangraha, and Bhaisajya Ratnabali, and have to be manufactured only in bond by a qualified Kabiraj or by a Kabiraji firm having a qualified Kabiraj for supervision of the manufacturing operations. Further, the alcoholic content of the preparations must be below 42 per centum. According to the recipe found in these Ayurvedic books, the basic ingredient out of which these preparations are manufactured is gur; besides gur there are 42 other ingredients which have to be mixed. These ingredients are medicinal drugs according to Ayurveda. In addition to these ingredients, water is also mixed and the whole mixture is kept sealed for 20 days, presumably for the purpose of fermentation and thereafter the preparation is obtained by distillation and as already stated contains about 42 per centum of alcohol. Further, according to these books, the preparation is used as a tonic to build body and physique, to increase strength and appetite and to make appearance healthy and bright. It is also used in Sannipat Jwara (typhoid fever) in critical stages. It is also prescribed for cholera in frequent doses and finally is used in all conditions of collapse. The counter-affidavits filed on behalf of the Union and the States which are opposing these petitions do not definitely state that these preparations are not medicinal preparations. For example, in the affidavit of the State of West Bengal, it is stated that it is not admitted that these preparations are exclusively for medicinal purposes. It is also stated that these alcoholic preparations are capable of being used as ordinary alcoholic beverages.

Similarly, in the affidavit of the Union, it is stated that it is not admitted that the preparations are efficacious remedies for any human ailment. On the other hand, a number of affidavits have been filed on behalf of the petitioners from registered Kabirajas to show that these preparations are manufactured according to the three Ayurvedic books already mentioned and are used for certain diseases including cholera. The respondents, however, rely on the advice of the Standing Committee consisting of the Drugs Controller of the Government of India and the Chief Chemist, Central Revenues Control Laboratory, which was of opinion after examining the formulae and the analytical data and the claims given on the label of the preparations and also after carrying out tasting test, that these three preparations should be considered straight forward beverages and not as medicinal preparations. It was in consequence of this decision that these three preparations were taken out of the list attached to the Rules framed under the Act. The two members of the Standing Committee do not appear to be experts in Ayurvedic medicines and no affidavit has been filed of any ayurvedic expert on behalf of the respondents. There seems no reason therefore not to accept the affidavits filed on behalf of the petitioners from qualified Ayurvedic practitioners; series F to F 16. These Ayurvedic practitioners are not connected with the petitioners and what they say in their affidavits is in accordance with the use to which these preparations can be put as medicines according to the three Ayurvedic text books already referred to. In these circumstances it would in our opinion be impossible to say that these preparations are not remedies prepared for internal use of human beings and are not intended to be used for or in the treatment, mitigation or prevention of disease in human beings. If therefore they are a remedy prepared for internal use of human beings and are intended to be used for or in the treatment, mitigation and prevention of disease in human beings, they would clearly be medicinal preparations within the meaning of s. 2(g) of the Act; and if so, they would be liable to be taxed under the Schedule to the Act and not under the various Excise Acts of the different States concerned. It is only necessary to add that the definition of "medicinal preparation" contained in s. 2(g) of the Act, does not depart from the meaning of that expression when it occurs in item 84 of List I, and hence on the Act coming into force, the States lost the power to levy excise duty on these preparations.

8. We may in this connection refer to the counter-affidavit filed on behalf of the State of Uttar Pradesh, where it has been stated that on the basis of the formulae alleged by the petitioners in the Schedules, no standard medicinal preparation can be prepared as the mode of preparation contravenes all settled laws of biochemistry. This has been sworn by an Excise Inspector of the Excise and Intelligence Bureau of the State of Uttar Pradesh. It is not clear however from the counter-affidavit what qualifications the deponent has to make such a statement, nor are we able to understand which laws of biochemistry are contravened by the mode of preparation prescribed in the three Ayurvedic text books already referred to. As against this, we may refer to the report of the Chopra Committee on Indigenous Drugs of India. In para. 265, the Committee

says that in different parts of India, as many as 900 indigenous drugs (vegetable, mineral and metallic) and over 1000 preparations made from these drugs are used by the Ayurvedic physicians, and "there seems to be little doubt that out of the large number of drugs used by the Hindu physicians for centuries past and still in use, there are some that deserve the reputation they have earned as cures". In para. 266, the Committee points out the difficulties in the way of assessment of the proper value of indigenous drugs. These difficulties are of two kinds; firstly, the modern scientists are not acquainted with the exact connotation of terms of Indian pharmacology, and secondly, whereas western medicine tries to explain the action of a drug in terms of its chemical components, such as alkaloids, glucosides, essential oils, antibiotics, hormones etc., Indian medicine takes into account the action of the drug in its entirety, as they hold that the action of the whole drug is often different from that of any one of its constituents considered separately. The Committee further says that there is a good deal of truth in this assertion. In Para. 268, dealing with compound preparations, the Committee mentions another difficulty that usually confronts pharmacologists in the problem of investigating the value of compound medicines which are more frequently used than single drugs. It further points out that "the investigation of the pharmacological properties and therapeutic value is considered to be more in the particular combination than that of any one of the drugs taken separately. They therefore urge on the need for an investigation into the combination as a whole. But, for this, no modern methods are as yet available.

9. These observations of the Chopra Committee will show that the claim made in the counter-affidavit filed on behalf of the State of Uttar Pradesh based on the so-called settled laws of biochemistry cannot be accepted - at any rate with respect to compound preparations like the three under consideration, for the research on Ayurvedic medicines has been so far very little. Reference may also be made to the report of a Committee known as Udupa Committee with respect to the Ayurvedic system of medicines. At p. 132, the Committee observes, on the question of the enactment of a Drugs Act for Indian medicines that the Central Government do not have any technical persons who has detailed knowledge Ayurvedic drugs, though there are a large number of Ayurvedic scholars on the pharmacy side whose help can be taken in drafting the necessary bill. In this connection, the Committee suggested that an adviser on Ayurvedic drugs should be appointed for this purpose immediately, who should have under him an Ayurvedic Drugs Advisory Committee, and this will facilitate the drafting of the legislation the Committee had in mind and also help the Government to decide disputed points about Ayurvedic drugs and medicines which were now cropping up frequently. This Committee was constituted in July, 1958, and it does not appear that any action on the lines suggested by the Committee was taken by the Government of India. In these circumstances we have on the one side the three standard Ayurvedic text books according to which these preparations are created; we have also the affidavits of a large number of Ayurvedic practitioners

of obvious repute to the effect that these preparations are medicinal preparations which are used to alleviate human suffering in certain conditions. On the other hand, there is no affidavit from an Ayurvedic expert on behalf of the respondents. We may however in this connection refer to an affidavit of the Assistant Chemical Examiner to the Government of West Bengal who is experienced in examining and analysing alcoholic liquors. According to him, the chief basis of these three preparations is molasses and gur, which is a fact as we have already pointed out from the recipe in the Ayurvedic text books. He further says that in these three preparations there are several steam volatile products, namely, furfural, aldehydes, ketones and acids but the presence of the same does not destroy or minimise the effect of alcoholic intoxication of these preparations. He further says that the taste or smell of these preparations does not make them unfit for drinking in a large dose and they can be used as an alcoholic beverage. Even this affidavit does not say that these are not medicinal preparations. All that it says is that these preparations contain about 42 per centum of alcohol and can be used as ordinary alcoholic beverages. So if these preparations are medicinal preparations but are also capable of being used as ordinary alcoholic beverages, they will fall under the Act and will be liable to duty under item No. 1 of the Schedule at the rate of Rs. 17.50 nP. per gallon of the strength of London proof spirit. On a consideration of the material that has been placed before us, therefore, the only conclusion to which we can come is that these preparations are medicinal preparations according to the standard Ayurvedic text books referred to already, though they are also capable of being used as ordinary alcoholic beverages. They will therefore clearly fall within the definition of "medicinal preparation" and would be liable to duty under item 1 of the Schedule to the Act. So far as the decision of the Standing Committee is concerned which resulted in the omission of these three preparations from the list attached to the Rules, that is not conclusive on the question whether these are medicinal preparations or not. Further the fact that these preparations are omitted from the list attached to the Rules would make no difference to their being medicinal preparations within the meaning of the Act, liable to duty under item 1 of the Schedule, if they are in fact medicinal preparations as we hold them to be. They will therefore be liable to duty under item 1 of the Schedule to the Act as they undoubtedly fall under that item and are capable of being consumed as ordinary alcoholic beverages. They cannot however be taxed under the various Excise Acts in force in the concerned States in view of their being medicinal preparations which are governed by the Act.

10. Lastly, it was urged on behalf of the respondents that these preparations are not prepared according to the formulae in the Ayurvedic text books referred to above. That is a question of fact which it is not possible for us to decide on the materials placed before us. The averment in this connection on behalf of the respondents is also not categorical; for example, it has been stated on behalf of the Union of India that it is not admitted that these preparations are prepared according to the specifications by utilising the proper ingredients and are

manufactured according to the recipe and direction given in the Ayurvedic text books referred to above. Nothing has been brought on the record to show that these preparations were analysed and the analysis showed that the ingredients mentioned in the Ayurvedic text books were not present in the preparations. Besides, as it appears from the West Bengal Rules (ref. West Bengal Excise Compilation, Pt. 2) which we have quoted above, these preparations are prepared in bond and there are various restrictions before the issue of the preparations by the manufacturer. Nothing has been said to show that these preparations are not in fact made in accordance with the direction contained in the Ayurvedic text books. If this was not so, the excise staff would be there to check their preparation. As a matter of fact the first rule with respect to the manufacture of these preparations in the West Bengal Excise Compilation lays down that they will be prepared according to the recipe and direction in Arka Prakash, Ayurved Sangraha and Bhaisajya-Ratnabali; and if that rule is being disobeyed we should have expected some one to swear that though the rule says that the preparations should be made according to the directions in these text books, they are in fact not so made. Further if the rule is being contravened, there must be power in the State-Government to take action against those who contravene the rule. But nothing has been brought to our notice to show that any action has been taken. In these circumstances we are not prepared to hold that these preparations are not prepared according to the Ayurvedic text books; and in any case our decision holding these three preparations as medicinal preparations is based on these preparations being made in accordance with the directions contained in the Ayurvedic text books and also in accordance with the Rules in the West Bengal Excise Compilation. We presume that the same must be the state of affairs in other States where these preparations are manufactured, though it appears that the petitioners in the present case are mostly from Calcutta and the manufacture in these cases must be going on Calcutta.

11. We therefore allow the petitions and direct that these three medicinal preparations should not be taxed under the various Excise Acts in force in various States and can only be taxed in accordance with the provisions of the Medicinal and Toilet preparations (Excise Duties) Act. We pass no order as to the claim for refund for that is a matter which the petitioners can take up with the State Governments concerned according to law. The petitioners will get their costs from the respondents - one set of hearing fee.

12. Petitions allowed.