
(2006) 03 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4095 of 1994

Baidyanath Ayurved Bhawan Ltd.

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 42B, 45

Citation : (2006) 03 MP CK 0056

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : A.G. Dhande and Saurabh Tiwari, for the Appellant; P.N. Dubey, Dy. AG, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition has assailed an order (Annexure H) dated 17.6.1994.

2. The case was referred to the Commissioner u/s 42-B of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as Act of 1958). With respect to the Classification of "Baidyanath Dant Manjan Lal" it was opined by the Commissioner of Sales Tax as per order dated 14.12.1992 that it was a medicament and upto 31.3.1992 tax @ 3% could be realized and thereafter as e.g. 1.4.1992 tax @ 6% could be realized. The said order was reconsidered as per order (Annexure H) dated 17.6.1994 and the Commissioner has opined that "Baidyanath Dant Manjan Lal" is not a medicine hence it was liable to be taxed as per Entry II of Schedule 2 Part III.

3. Shri A.G. Dhande, learned Sr. counsel with Shri Saurabh Tiwari for the petitioner has raised two submissions. Firstly that under the Drugs and Cosmetics Act, 1940 the product in question has been treated as medicament. He has further relied upon the Aayurvedi Saar Sangrah and first schedule of Drugs and Cosmetics Act Entry No. 54-B to contend that preparation in question

is covered by Aayurved Saar Sangrah, thus the previous order which was passed was proper. It was not permissible to make a review of the order that too suo-motu.

4. Shri P.N. Dubey, Dy. A.G. appearing for the respondents/State has placed reliance on a decision of Apex Court in Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur, , in which the Apex Court has laid down that "Baidyanath Dant Manjnn Lal" is not eligible to exemption as medicine under Central Excise and Salt Act. He has also placed reliance on a decision of the Appex Court in Commissioner of Central Excise, Nagpur Vs. Vicco Laboratories, .

5. With respect to the classification of the goods, in the considered opinion of this Court, considering the popular parlance and also considering the fact that "Baidyanath Dant Manjan Lal" is not prescribed by Medical Practitioner, it is used everyday, thus on the basis or tests which have been held to be relevant by the Apex Court in Shree Baldvanath Ayuryed Bhayan Ltd. v. Collector of Central Excise, Nagpur (supra), it cannot be said that "Baidyanath Dant Manjan Lal" is a medicine for the purpose of M.P. General Sales Act, 1958. The Apex Court in Shree Baidyanath Ayuryed Bhayan Ltd. v. Collector of Central Excise, Nagpur (supra) held thus:

3. We have heard the learned Counsel at some length. He also invited our attention to the provisions of the Drugs and Cosmetics Act, 1940, the opinion of the experts, the statements of a few consumers as well as the description given in certain Ayurvedic books and contended that the preparation would fall within the relevant entry in the exemption notification. The Tribunal rightly points out that in interpreting statutes like the Excise Act the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say the meaning attached to them by those using the product. It is for this reason that the Tribunal came to the conclusion that scientific and technical meanings would not advance the case of the appellants if the same runs counter to how the product is understood in popular parlance. That is why the Tribunal observed in para 8.6 of the judgment as under:

So certificates and affidavits given by the Vaidyas do not advance the case of Shri Baldyanath absence Bhawan Limited in the absence of any evidence on record to show and prove that the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a tiolet requisite.

It is this line of reasoning with which we are in agreement, The Tribunal rejected the claim of the appellant holding that ordinarily a medicine is prescribed by a medical practitioner and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes. We are, therefore, of the opinion that the Tribunal applied the correct principles in concluding that the

product in question was not a medical preparation ("Ayurvedic") and, therefore, the appellant was not entitled to the benefit of the exemption notification. Having heard the learned Counsel at length and having perused the line of reasoning adopted by the Tribunal with which we are in general agreement/ we see no reason to interfere with the conclusion reached by the Tribunal and, therefore, we dismiss these appeals, but make no order as to costs.

6. The Apex Court in Commissioner of Central Excise, Nagpur v. Vicco Laboratories has held that test of common parlance (sic) applied.

7. In view of the above, I find that there is no illegality in the order (Annexure H). It cannot be said that Dant Manjan Lal manufactured by Baidyanath Ayurvedic Bhawan is a medicine.

8. Coming to the submission raised by the petitioner's counsel that it was not open to make suo motu review of the order. Disputed question was answered u/s 42B by the Commissioner Sales Tax. In the opinion, of this Court it was permissible to the Commissioner to pass correct order and to correct the mistake. Substantial justice has been done and order is correct on merit, as such I am not inclined to make interference in this writ petition, A show cause notice was issued and when it was issued has not been stated. Even otherwise mistake could be corrected u/s 45. In view of the aforesaid I find no ground to make interference in writ jurisdiction of this Court as the order is just. Writ is not issued to perpetrate an illegality.

9. Consequently, writ petition is dismissed. No costs.