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**(2003) 04 SC CK 0026**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 1512 of 2001**

Commissioner of Central Excise, Calcutta-IV

APPELLANT

Vs

Pandit D.P. Sharma

RESPONDENT

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**Date of Decision : 30-04-2003**

**Acts Referred:**

**Citation :** (2003) 87 ECC 247 : (2003) 154 ELT 324 : (2003) 4 JT 353 : (2003) 4 SCALE 445 : (2003) 5 SCC 288 : (2003) 3 SCR 1041

**Hon'ble Judges :** S. N. Variava, J;Brijesh Kumar, J

**Bench :** Division Bench

**Advocate :** Raju Ramachandran, Additional Solicitor General, Sanjiv Sen, Ashok K. Srivastava, K. Swami and B.K. Prasad, for the Appellant; Rana Mukherjee, Siddharth Gautam, Goodwill Indeevar and Sumita Mukherjee, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.N. Variava, J.—This appeal is against the Judgment dt. 19th May 2000 passed by Customs, Excise and Gold (Control) Appellate Tribunal, Calcutta.

2. Briefly stated the facts are as follows:

The Respondents are manufacturing a product known as "Himtaj oil". The Respondents filed a classification list classifying "Himtaj oil" as Ayurvedic medicine under subheading 3003.30. A show cause notice was issued to them as to why their oil should not be classified as "perfumed hair oil" under subheading 3305.10. The Respondents replied to the show cause notice. The Assistant Collector accepted the Respondents' case that their oil fell under subheading 3003.30. For so holding the Assistant Collector inter alia relied on the following material:

(a) Drug licence issued by the Drug Controller.

(b) A letter issued by the Superintendent of Ayurvedic Department, Benaras which stated that the product was an Ayurvedic medicine.

(c) A study report of the Institute of Postgraduate Education and Research in Ayurved, Calcutta on "Himtaj oil" which classified this oil as an Ayurvedic product which relieved pain in headaches and migraine and also provided relief against dandruff.

(d) A report prepared by the Range Officer, based on market inquiries conducted by him with dealers, wholesalers, retailers, customers, chemist and druggist, which showed that all treated "Himtaj oil" as an Ayurvedic Medicament.

(e) A re-testing Report of the Chief Chemist, New Delhi which stated that no Ayurvedic perfumery could be detected in "Himtaj oil".

(f) SSI Registration Certificate obtained by the Respondents for manufacturing Ayurvedic oil under a drug licence.

3. Against the decision of the Assistant Collector the revenue filed an appeal to the Commissioner (Appeals). By his order dated 10th July, 1997 the Commissioner (Appeals) allowed the appeal of the revenue. The Commissioner (Appeals) held that there was no evidence to prove that the product was being ordinarily prescribed by medical practitioners or that it was used to deal with a specific disease. The Commissioner (Appeals) held that there was no evidence to show that the common man use the product as a medicine.

4. Against the Order dated 10th July 1997 the Respondents filed an Appeal to CEGAT. By the impugned order CEGAT has allowed the Appeal. Hence this Appeal by the revenue.

5. At the stage it must be mentioned that in this Civil Appeal the question of classification relates to "Himtaj oil". On board along with this Appeal were a number of other Appeals which related to classification of "Bhanphool oil." The arguments of learned Additional Solicitor General, Mr. Raju Ramachandran, in this Appeal were based upon the submissions made in respect of "Bhanphool oil". It was submitted that if the submissions regarding "Bhanphool oil" are accepted by this Court when on the same reasoning it would have to be held that "Himtaj oil" was not an Ayurvedic medicament. Reliance was also placed upon the authority of this Court in the case of Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur, . In this case it is held that resort to scientific and technical meaning should not be had but that the expression must be understood in its popular meaning. It was held that ordinarily a medicine would be prescribed by medical practitioner and would be used for a limited time and not every day unless it was so prescribed to deal with a specific disease like diabetes. On this basis it was held that the product in question namely "Dant Manjan Lal"(tooth powder) was not a medicine.

6. We have today, by a separate judgment, negated the submissions of the revenue in respect of "Bhanphool oil". Thus for reasons set out in that separate judgment the arguments of the revenue even in respect of "Himtaj oil" cannot be accepted. The authority relied upon is also of no assistance. In that case there

was no evidence to show that the common man considered that product as a medicine. In this case the report of the Range Officer shows that dealers, wholesalers, retailers, customers, chemists and druggist all consider "Himtaj oil" to be an Ayurvedic medicament. Apart from that the order material relied upon by the Assistant Collector (which has been set out hereinabove) also clearly shows that "Himtaj oil" is an Ayurvedic medicament. In this view of the matter we see no infirmity in the impugned judgment.

7. Accordingly the Appeal stands dismissed. There will however be no order as to costs.