(1999) 10 MP CK 0028

In the Madhya Pradesh High Court

Case No : M.C.C. No''s. 522 and 524 of 1998

Commissioner of Commercial Tax APPELLANT

Vs

Dabar India Ltd. RESPONDENT

Date of Decision : 04-10-1999

Acts Referred:

Citation : (2000) 119 STC 37

Hon'ble Judges : Shambhoo Singh, J;Bashir Ahmed Khan, J

Bench : Division Bench

Advocate : B.A. Chitle, for the Appellant; G.M. Chafekar, for the Respondent

Judgement

1. Both these M.C.Cs. being identical in nature are disposed of by this common order.

2. Assessee is a manufacturer and dealer in ayurvedic medicines. He also manufactures and sells "gulab jal". He was charged 12 per cent sales tax on this under residuary entry but he claimed that it was ayurvedic medicine and chargeable at 3 per cent under entry 16 of Part IV (Schedule II) of the Madhya Pradesh General Sales Tax Act, 1958. He has supported it by a certificate from some of the doctors, some Sanskrit texts and on the plea that he was manufacturing it under the licence issued under the Drugs Act. His claim was, however, rejected by assessing authority and Appellate Deputy Commissioner. Board of Revenue, however, relying upon judgment of this Court took a view that "gulab jal" was ayurvedic medicine and taxable at 3 per cent and not 12 per cent. Revenue sought reference against this and that is how we are seized of the matter and require to answer the following question :

"Whether, under the facts and circumstances of the case, the Tribunal is justified in holding that the gulab jal manufactured by Dabar India Ltd., a manufacturer of ayurvedic medicines, is an ayurvedic medicine and it should be taxed as such at 3 per cent ?"

3. The point in issue is covered by our judgment also in Vicco Vajradanti''s case

(1998) 20 TLD 194 Commissioner of Commercial Tax v. Dawar Brothers [1998] 111 STC 319 (MP) wherein we have laid down certain parameters to adjudge whether product like "gulab jal" qualified to be ayurvedic medicine. One of the tests was whether the product was manufactured under a licence issued under the Drugs Act. It was also observed in that judgment that once a product figured in its schedule as a drug/medicine it could not be treated otherwise by Revenue unless deleted from the Statute.

4. Assessee-company is admittedly manufacturer of Ayurvedic medicines and its case is squarely covered by the judgment in Vicco Vajradanti (1998) 20 TLD 194*. Amongst other products, it also manufactures "gulab jal" under the licence. It may not be a commonly used Ayurvedic medicines, but so long as it figures as such in the statute, it cannot be derecognised by the Revenue on no basis. We accordingly find ourselves in agreement with the view taken by Board of Revenue and answer the question in affirmative by holding that Tribunal was justified in holding "gulab jal" as ayurvedic medicine taxable at 3 per cent under entry 16 instead of at 12 per cent under the residuary entry.

