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(2016) 05 AHC CK 0330

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 154, 155 and 156 of 2016

The Commissioner, Commercial Tax — APPELLANT

Vs

S/S Dabur India Limited — RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Citation : (2016) 93 UPTC 356

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Bipin Kumar Pandey S.C, for the Applicant; C.S.C, Suyash Agarwal and Abhishek Anand, Advocates, for the Opposite Party

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard Sri B.K. Pandey, learned counsel for the petitioner. Sri Suyash Agrawal and Sri Abhishek Anand have put in appearnce on behalf of the respondent.

2. The revenue has raised the following question of law before the Court in these revisions:-

"Whether on the facts and circumstances of the case the tribunal was legally justified in holding Chyawanprash, Hajmola and Hajmola Candy to be medicines even though they are not sold on the medical shops rather on general stores?"

3. The tribunal by the impugned order dated 7.1.2016 has returned a finding of fact that each of the above three products Chyawanprash, Hajmola and Hajmola Candy are being manufactured by the respondent Dabur India Private Limited for the last many years under the license granted to it by the licensing officer of Ayurvedic and Unani Services Under the Drug and Cosmetic Act, 1940.

4. The tribunal on the basis of the above finding, in view of the various decisions of the higher Courts laying down that where any product is manufactured under a license for manufacturing a drug the nature of product would be that of a

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medicine, classified all the above three products as medicines for the proposes of tax.

5. The tribunal in this regard apart from relying upon some decisions of other High Courts has placed reliance upon a decision of the Allahabad High Court in the case of Lal Dant Manjan wherein the products manufactured by the company under the license granted to it under the Drugs and Cosmetic Act were held to be medicines/drugs.

6. The aforesaid decision has been followed by the Allahabad High Court in Precise Laboratories Pvt. Limited. In this case the principal laid down in Lal Dant Manjan (Supra) that a product which is manufactured under a license issued for manufacturing a drug under the Drug and Cosmetic Act, 1940 would be a medicine/drug was followed and reiterated.

7. In addition to the above, it may be pertinent to mention in this context that the place of sale of any product is not a relevant criteria for determining its nature as to whether it is a drug/medicine or an item of general use rather the relevant criteria is the license under which such a product is being manufactured and if the license is for the purposes of manufacturing a drug or medicine under the relevant statute, the product would essentially be a drug/medicine.

8. In view of the aforesaid facts and circumstances, there is no substance in the question raised which in fact stands answered in the earlier decisions of this Court.

9. Accordingly, these revisions lack merit and are dismissed.

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