

ITEM NO.52

COURT NO.9

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 1564/2016

(Arising out of impugned final judgment and order dated 10-07-2015 in CER No. 8/2004 passed by the High Court Of Judicature At Allahabad)

M/S DEENA JEE SANSTHAN & ORS.

Petitioner(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, MEERUT

Respondent(s)

Date : 02-01-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Pawanshree Agrawal, AOR

For Respondent(s) Mr. Tushar mehta, SG
 Ms. Nisha Bagchi, Adv.
 Mr. Swati Ghildyal, Adv.
 Mr. Shirin Khajuria, Adv.
 Mr. Manish, Adv.
 Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following

O R D E R

This court had issued notice in the present petition on 15th January, 2016 and the following order was passed:

"Heard Mr. Pawanshree Agrawal, learned counsel for the petitioner.

Delay condoned.

It is submitted by Mr. Agrawal that the High Court has committed grave error in answering the question No.1 in the Central Excise Reference No.8 of 2004 in favour of the revenue in an erroneous manner that the extended period of limitation would be

applicable, inasmuch as the goods in question were excisable and removal thereof without paying duty was in contravention of the provisions of the Act. It is urged by him that the goods involved herein are, Dena Ji Brand Satritha shampoo, Dena Ji Brand Harbal shampoo and Dena Ji Brand Neem shampoo, being classifiable under heading 3003.20, approved by this Court in *Meghdoot Gramodyog Sewa Sansthan vs. C.C.E., Lucknow*, (2004) 174 ELT 14 (SC), and the said shampoos have been declared as ayurvedic medicines where excise duty is not payable. It is contended by him that when duty is not leviable, the issue of extendable period would not be applicable.

Issue notice.

There shall be interim stay of the impugned order, subject to the petitioner depositing fifty per cent of the demanded duty before the Department within weeks hence."

We have heard learned counsel for the parties. We find merit in the submission canvassed by the learned counsel for the respondent that the decision in *Meghdoot Gramodyog Sewa Sansthan* vs. *C.C.E., Lucknow* (2004) 174 ELT 14 (SC), is on facts of the said case as is noticed from the observation in paragraph 6 of the said judgment which reads thus:

"The appellant has drawn our attention to the composition of the six products and the uses in respect of each of these six products. This has not been doubted by the Tribunal nor indeed by the Departmental authority. The composition and the curative properties being admitted, it was not open either to the Department or the Tribunal to hold that the items were cosmetics merely by reason of the outward packing."

In the said case, there was no dispute about the composition and the curative properties of the six products. It had medicinal value and used for ayurvedic treatment. Hence, the same

were treated as ayurvedic products.

In the present case, the finding of fact recorded by the Commissioner in its order dated 27.11.1997, after evaluating the material on record was that the product in question was not used as ayurvedic medicine but was a "shampoo". This finding can be discerned from paragraph 8 of the judgment of the Commissioner, which reads as under:

"8. In their defence reply, M/s. DJS had contended that all the ingredients of the product manufactured by them appear in the authorities books on ayurveda listed in the first schedule of Drugs and Cosmetic Act. However, I am not inclined to accept the party's plea that since ingredients are listed in the medicine should be considered as a whole and not only on the basis of its ingredients, however important they may be moreover, I find that some of the ingredients like amla, ritha, shikakai etc. are not understood as 'medicines' in common parlance though they might have been mentioned in the ayurvedic reference books. Even if such products are being sold/advertised as ayurvedic medicines, it is not sufficient to establish that the product is noticee party have failed to produce any evidence, document or otherwise that the product shampoo being sold by them is known as ayurvedic medicine in common parlance and not as a toilet preparation. In interpreting tariff hearing of a commodity, resort should not be made to the scientific and technical meaning of the terms and expression used but to their popular meaning in medical practitioner for a specific

disease. Further, I find in his statement dated 16.09.96 recorded under sec. 14 of the Central Excise Act, 1944 Shri Ajay Kumar Gupta, Manager referred to their product as "shampoo" thereby indicating its actual identity as known in common trade parlance. Consequently, I find no reason to agree with views of the defence that their product is ayurvedic medicine and not shampoo as understood in common trade parlance."

Suffice it to observe that the position in the present case about the composition of the product and the curative properties thereof have been seriously disputed and not admitted as was the case in Meghdoot's case (*supra*). Considering the above, no fault can be found with the impugned judgment.

The special leave petition is disposed of accordingly.

Pending application, if any, also stand disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(ANITA RANI AHUJA)
COURT MASTER (NSH)