HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

T.R.C. No.92 OF 2002

ORDER:- (per CKR,J)

This Revision Case is filed by the revenue under Section 22(1) Rule (10) of A.P.G.S.T. Act (for short "the Act"), raising the following two questions of law said to be arising out of the order dated 02.11.1995, of the Sales Tax Appellate Tribunal, Hyderabad, for the assessment year 1990-91.

a) "Whether the Vicco Products are Ayurvedic medicinal preparations covered by entry (37) of the I schedule to the APGST Act or Cosmetics falling under entry (36) of the I Schedule.

b) Whether the S.T.A.T is justified in allowing the two appeals by stating that the State failed in producing any evidence contrary to the evidence produced by the appellant?"

2. When the matter is taken up for admission, the learned counsel for the respondent submits that the issue involved in the present case is squarely covered by the judgment of the Supreme Court in the assessee's own case reported in **Commissioner of Central Excise vs. Vicco Laboratories**[1]**.** The question raised is whether the Vicco Products are Ayurvedic medicinal preparations covered by entry (37) of the I schedule to the Act or Cosmetics falling under entry (36) of the I Schedule.

3. The Supreme Court by applying the test as laid down in the case of **Shree Baidyanath Ayurved Bhavan Ltd. V. Collector of Central Excise, Indore,** came to the conclusion that the product is a

Ayurvedic Product and not a Cosmetic product. This judgment was reported in (2005) 4 SCC page 17. The same judgment was again followed by the Supreme Court in the case of **M/s. Dabur India Limited v. Commissioner of Central Excise, Jamshedpur** in Appeal (Civil) 7907 of 2002. The finding recorded by the Tribunal is also that after analyzing various aspects is to the effect that the products manufactured by the respondent are medicinal products and not cosmetic products. In the light of the finding recorded as well as on account of the judgment of the Supreme Court in assessee's own case though under the Central Excise Act, the appeal of the department fails and the questions are required to be answered in favour of the assessee and against the revenue.

Accordingly, the T.R.C is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this T.R.C shall stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM,J

Date:07.07.2015.
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HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Date:07.07.2015.

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[1] (2005) 4 SCC 17