

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.2 of 2013

State of Odisha

.... *Petitioner*
Mr. S.Mishra, ASC

-versus-

*M/s. Shree Baidyanath Ayurved
Bhawan (P) Ltd.*

.... *Opposite Party*

Mr. S. Lal, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
12.07.2022**

Order No.

Dr. S. Muralidhar, CJ.

04. 1. The following two questions have been framed for considerations by this Court order dated 9th January, 2013 while admitting this revision petition of the Revenue arising from an order dated 19th November, 2011 passed by the Orissa Sales Tribunal, Cuttack in S.A. No.162 of 2009-10:

(i) Whether on the facts and in the circumstances of the case, the Odisha Sales Tax Tribunal erred in law by deciding the second appeal of the dealer on merit especially when it has remitted the matter back to the assessing authority of the Range on the ground that the assessing authority of the Circle had no jurisdiction to take up assessment under the Odisha Value Added Tax, 2004 of the dealer assigned with TIN?

(ii) Whether on the facts and in the circumstances of the case, the reliance placed on the decision rendered in State of Odisha Vrs. Magnum Pharmatech (P) Ltd., S.A.No.162 of 2009-10 disposed of on 19.11.2011 by the Odisha Sales Tax Tribunal in order to come to conclusion that "Dant Manjan Lal" is ayurvedic

medicine and therefore, the finding runs contrary to decision rendered in CEE Vrs. Shree Baidyanath Ayurved Bhawan Ltd., (2010) 1 GSTR 1 (SC); Dabour India Ltd. Vrs. CST, (1997) 104 STC 198 (Ori.); Dabour India Ltd. Vrs. CST (2004) 135 STC 187 (Ori.) and beyond scope of Entry 26 (as it stood during tax periods from 01.04.2005 to 30.06.2005) and Entry 46 (as it stood during tax periods from 01.07.2005 to 31.05.2007) of Part II of Schedule B appended to the Odisha Value Added Tax Act, 2004?

2. As regards the first question, it is pointed out that by the impugned order the Tribunal itself remanded the matter to the Assessing Authority to make a fresh assessment. Further, in terms of the answer by this Court hereafter to the second question, the need for such remand would not arise.

3. As regards the second question, reliance has been placed by Mr. Sunil Mishra, learned Additional Standing Counsel for the Revenue on the judgment of the Supreme Court in *Shree Baidyanath Ayurved Bhawan Ltd. v. Collector of Central Excise, Nagpur* (1996) 9 SCC 402, whether the very same product in question viz., *Dant Manjan Lal* manufactured by the Respondent Assessee has been held to not to be a drug or a medicine but a cosmetic. The relevant observations of the Supreme Court in the said judgment reads as under:

“3. We have heard the learned Counsel to some length. He also invited our attention to the provisions of the Drugs & Cosmetics Act, 1940, the opinion of the Experts, the statements of a few consumers as well as the description given in certain Ayurvedic Books and contended that the preparation would fall within the relevant entry in the exemption

notification. The Tribunal rightly points out that in interpreting statutes like the Excise Act the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say, the meaning attached to them by those using the product. It is for this reason that the Tribunal came to the conclusion that scientific and technical meanings would not advance the case of the appellants if the same runs counter to how the product is understood in popular parlance.”

That is why the Tribunal observed in Paragraph 86 of the judgment as under:

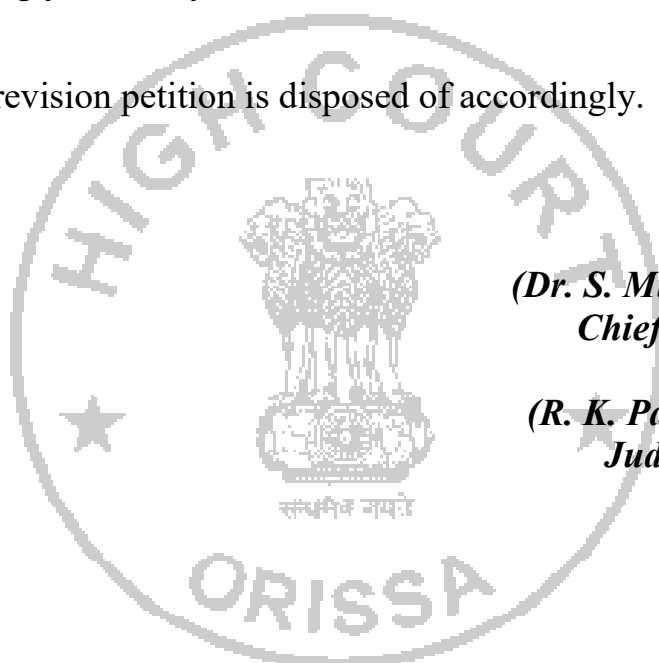
So certificates and affidavits given by the Vaidyas do not advance the case of Shri Baidyanath Ayurvedic Bhawan Limited in the absence of any evidence on record to show and prove that the common man who uses this Dant Manjan daily to clean his teeth considers this Dant Manjan as a medicine and not a toilet requisite.

It is this line of reasoning with which we are in agreement. The Tribunal rejected the claim of the appellant holding that ordinarily a medicine is prescribed by a Medical Practitioner and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes. We are, therefore, of the opinion that the Tribunal applied the correct principles in concluding that the product in question was not a medicinal preparation (‘Ayurvedic’) and, therefore, the appellant was not entitled to the benefit of the exemption notification. Having heard the learned Counsel at length and having perused the line of reasoning adopted by the Tribunal with which we are in general agreement, we see no reason to interfere with the conclusion reached by the Tribunal and,

therefore, we dismiss these appeals, but make no order as to costs.”

4. Since the above judgment is as regards the very product with which the present petition is concerned viz., *Dant Manjan Lal* toothpaste, the aforementioned second question is answered against the Assessee and in favour of the Department. In view of the above conclusion, the remand by the Tribunal to the Assessing Officer becomes unnecessary. The impugned order of the Tribunal accordingly is hereby set aside.

5. The revision petition is disposed of accordingly.



(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

TUDU