223 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

VATAP No.48 of 2011 (O&M)
Date of Decision: 19.01.2023

M/s. Perfetti Van Melle India Pvt. Ltd.

..…... Appellant

V/s.

State of Punjab and Another

…..…Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Shantanu Bansal, Advocate
for the appellant.

Mr. Saurabh Kapoor, Addl. AG, Punjab.

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Ritu Bahri, J (Oral)

This appeal has been filed under Section 68 of the Punjab Value Added Tax Act, 2005 (for short 'the PVAT Act, 2005) against the impugned order dated 02.12.2010 (**Annexure A-4**) passed by Value Added Tax Tribunal (constituted under the Punjab Value Added Tax Act, 2005) in Appeal No.126 of 2010 of that office whereby the items namely, 'Choloromint Herbasol', 'Happydent White' and '*Chatar Patar'* manufactured by the appellant, were made liable to be taxed at 12.5%, as per Schedule 'F' of PVAT Act, 2005.

Learned counsel for the appellant has referred to the order (**Annexure P-4**) whereby the appeal filed by the appellant against the order dated 04.02.2008 vide which the Commissioner had disposed of an application under Section 85 of the Punjab VAT Act giving an opinion that the appellant will not be entitled to payment of 4% tax under the residue entry and his products will be liable to be taxed @12.5% under Schedule 'F' of Punjab Value Added Tax Act, 2005.

A perusal of the order (**Annexure A4**) shows that the dispute was with respect to the licence granted for the production of ‘Choloromint Herbasol’, *Chatar Patar* and ‘Happydent White’’ for which they had got the licence. Learned counsel for the appellant at the outset submits that, he does not press this appeal for *Chatar Patar*. The appeal only survives qua the ‘Choloromint Herbasol’ and ‘Happydent White’’. On these two issues, he submits that the issue has attained finality vide judgment given by the High Court of Uttrakhand in “**Commissioner Trade Tax Vs. Perfetti Van Mell”,** 2008 (60) RCR (Civil) 274) (**Annexure A-8**) which has been thereafter followed by the Allahabad High Court in the case of Commissioner Commercial Tax, U.P. Lucknow vs. M/s Perfaty Wanmele India Pvt. Ltd. and the judgment of the Allahabad High Court (**Annexure A-9**) has been upheld by the Hon’ble Supreme Court by dismissing the Special Leave Petition (Civil) No. 1375 of 2019 vide order dated 05.03.2019 **(Annexure A-10)**.

Learned counsel for the petitioner has also referred to another judgment of the Telangana High Court in “M/s Perfetti Vanmelle Hyd Vs. Commissioner Tax Officer” in W.P. No. 25670 of 2008 dated 13.12.2022 wherein with respect to manufacture of Choloromint and Happydent, these have been considered to be a medicine falling under Entry-88 of IV Schedule of the Act.

Learned counsel for the State has not been able to dispute the consistent view taken by the Uttrakhand High Court, Telangana High Court, Allahabad High Court which has been affirmed by the Hon’ble Supreme Court by dismissing the SLP (**Annexure A-10**) against the judgment passed by Allahabad High Court.

In the facts of the present case, the appellant has been granted license by the Licencing Authority i.e. Directorate of Ayush. The appellant is a Private Limited Company incorporated under the provisions of Indian Companies Act, 1956, having its registered office at 47th Mile Stone, Delhi-Jaipur Highway, Manesar, Gurugram and factories at Manesar (Haryana), Chennai (Tamil Nadu) and Rudrapur (Uttrakhand) and deals in manufacturing and selling of Ayurvedic Medicines and Confectionary etc.

In the State of Punjab, the Company *inter alia* deals in trading proprietary Ayurvedic medicines namely 'Choloromint Herbasol', 'Happydent' from its business place at Ambala-Chandigarh Road, Pabhat (Village & Post Office), Zirakpur, Punjab duly registered under the provisions of Punjab Value Added Tax Act, 2005 as well as Central Sales Tax Act, 1956. The petitioner is liable under Entry No.31 of Schedule B attached to Punjab Value Added Tax (PVAT) Act, 2005 and entry 31 of Schedule B reads as under:

> *"31. Drugs and medicines including vaccines, syringes and dressing, medicated ointments produced under drug license, light liquid paraffin of IP grade, medical equipments/ devices and implants."*

Further, as per the Drugs and Cosmetics Act, Section3(h)(i) defines 'Ayurvedic Propreitary Medicine' which is reproduced as under:

> *"in relation to Ayurvedic, Siddha or Unani Tibb systems of medicine of all formulations containing only such ingredients mentioned in the formulae described in the authoratitive books of Ayurveda, Siddha or Unani Tibb systems of medicine specified in the First Schedule, but does not include*

a medicine which is administered by parenteral route and also a formulation included in the authoritative books as specified in clause (a)..”

In the present case, the issue that the goods in question namely ‘‘Choloromint Herbasol’’ and ‘Happydent’ are medicines have been examined and has attained finality as per the judgments (supra) by the Uttrakhand High Court (**Annexure A-8**), Allahabad High Court (**Annexure A-9**) which has been affirmed by the Hon’ble Supreme Court by dismissing the SLP (**Annexure A-10**) against the judgment passed by Allahabad High Court.

Reference can now be made to the observations made by the Uttrakhand High Court in the case of “**Commissioner Trade Tax Vs. Perfetti Van Mell**” vide order dated 28.07.2008 with respect to the appellant-Company itself, the Uttrakhand High Court has observed that the items ‘Choloromint with Herbasol’ and ‘Happydent White’ are manufactured by the assessee under the drug licence issued to it by the Directorate of Ayurvedic Medicines of State of Haryana. Even if, for the purpose of utility, ‘Choloromint with Herbasol’ as mouth freshners and that of ‘Happydent White’ (baking soda with mint flavor) to keep the teeth clean, these items will not be confectionary items, specially when these items are manufactured under a valid drug licence. The Uttrakhand High Court held the above-said two items, ‘Choloromint with Herbasol’ and ‘Happydent White’ being manufactured under a valid drug licence are ayurvedic medicines and trade tax payable on said items @ 4% as per clause (b) of the Sub-Section (2) of Section 4 of Uttranchal Value Added Tax, 2005.

The view of the Uttrakhand High Court was thereafter followed by the Allahabad High Court in the year 2018. The Allahabad High Court while referring to the judgment of Hon'ble the Supreme Court in "***Puma Ayurvedic Herbal Pvt. Ltd. Vs. CCE***", 2006 3 SCC 266, observed as under:

> " *In Puma Ayurvedic Herbal (Pvt.) Ltd, the Supreme Court held that in order to find out whether the item is a medicament, it is not necessary that the item may be sold only under the doctor's prescription. A medicinal preparation may be purchased across the counter. The common parlance test however has to be applied with the other" test namely whether the ingredients used in the product are mentioned in the authoritative text books of Ayurveda.*
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> *The presence of organic ingredient mentioned in the wrapper by itself will not make a cosmetic as an ayurved medicine. Every cosmetic has some other medicinal value and that by itself do not convert every cosmetic into a medicine. The assessee has not produced any authority or text book to show that the ingredients of the cream manufactured by them have any medicinal value; it is prescribed as medicine and that its use is limited to the cure of the ailments claimed to be cured by it.*"

The Special Leave Petition (SLP) against the judgment passed by the Allahabad High Court was dismissed and the said judgment was upheld by Hon'ble the Supreme Court vide order dated 05.03.2019 **(Annexure A-10**).

Thereafter, the Telengana High Court vide judgment dated 13.12.2022 has followed the same view with respect to manufacturing of 'Choloromint with Herbasol' and 'Happydent White' and has held that these items are classified as falling under Entry-88 of IV Schedule of the Act and are subject to 4% tax during the relevant period.

In the present case, the Revenue-respondent has not led any evidence or produced any material to discharge the onus on it. Once the goods have been manufactured by the assessee under the Drugs Licence issued by the Directorate of Ayurvedic Medicines then the ayurvedic medicines would fall under Entry 31 of Schedule B attached with the Punjab Value Added Tax Act (PVAT), 2005 and is liable to be taxed @4% as per consistent view taken by the Uttrakhand High Court (**Annexure A-8**) and the Allahabad High Court (**Annexure A-9**) and the dismissal of SLP (**Annexure A-10**) and the Telengana High Court judgment dated 13.12.2022.

Keeping in view the above, the question posed for consideration in this appeal is answered against the respondent-Revenue and in favour of the assessee-appellant.

The appeal is allowed and the impugned order dated 02.12.2010 (**Annexure A-4**) passed by the Tribunal and the order dated 04.02.2008 (**Annexure A-2**) passed by Excise & Taxation Commissioner, are set aside.

(RITU BAHRI)
JUDGE

19th January, 2023 **(MANISHA BATRA)**
Sonia Puri **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No