

**BEFORE THE ADVANCE RULING AUTHORITY:
ODISHA SALES TAX TRIBUNAL :CUTTACK.**

✓ **Advance Ruling Application No. 01 of 2013-14**

Present : ... **Shri M.S. Dhal**, Chairman,
Shri A.K. Mohapatra, 2nd Judicial Member
&
Shri J. Pradhan, Accounts Member-II

M/s. Cholayil Pvt. Ltd.,
Cantonment Road, Cuttack. . . . Applicant

- Versus -

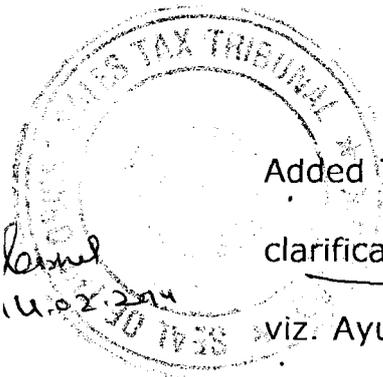
State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack. . . . Respondent

For the Appellant . . . Mr. S.S. Nanda, Advocate
For the Respondent . . . Mr. M.S. Raman, Addl. S.C. (CT)

Date of hearing: 10.02.2014 **** Date of order: 14.02.2014

ORDER

This is a petition filed U/s.78-A of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') by the applicant seeking a clarification with regard to rate of tax in respect of Ayurvedic Cosmetics, viz: Ayurvedic Soaps in the brand name of Medimix, talcum powder and prickle heat powder being medicaments and manufactured as per the license granted under Drugs and Cosmetics Act, 1940.



2. The brief facts relevant for the purpose of disposal of this application run thus :

The applicant is a Company registered under the jurisdiction of Dy. Commissioner of Sales Tax, Cuttack-I Central Circle, Cuttack having TIN 21263100509 w.e.f. 18.04.2011. It is dealing in general and Ayurvedic Cosmetics, viz. Ayurvedic Soaps in the brand name of Medimix, talcum powder, prickle heat powder, herbal bathing soap etc. All the stocks are received on stock transfer basis from different branches and factory situated outside the State. At present, the Company is collecting VAT @ 13.5% on its products. As per the Finance Act, 2012, the rate of Ayurvedic cosmetics containing added medicaments and manufactured under the license granted under Drugs and Cosmetics Act, 1940, which is taxable @ 5% as per Sl. No.46(a) of the OVAT Act. The items sold by the Company are Ayurvedic medicated products and thus, the same are liable to tax @5% instead of 13.5%. Accordingly, the applicant seeks for clarification from this forum as to the rate of tax on the products, i.e. Medimix, talcum powder, prickle heat powder, etc.

3. In course of hearing of the application, the learned counsel for the applicant has submitted that the commodities, i.e. Medimix, talcum powder, prickle heat powder, come under the category of Ayurvedic cosmetics. In support of his aforesaid contention, he has

filed copy of order of the authority for clarification and advance ruling issued by the Commercial Taxes Department of Andhra Pradesh, in-house testing report of the said item, analysis report issued by the KET's Scientific Research Centre, Mumbai, certificate issued by the Apollo Hospitals, Chennai.

On the contrary, the learned Addl. Standing Counsel (CT) appearing from the side of the respondent, has urged strenuously referring to the decision of the Hon'ble Apex Court in the case of State of Goa Vs. Leukoplast (India) Ltd., reported in (1997) 105 STC 318 (SC), that the product, i.e. medimix soap, does not fall within the definition of "drugs or medicines" as defined in Drugs and Cosmetics Act, 1940. Further, it is contended by him referring another decision of the Hon'ble Apex Court in the case of Sunny Industries Pvt. Ltd. Vs. Collector of Central Excise, reported in (2003) 4 SCC 280, that the soap of medimix brand is used as toiletry/bathing soap since the same does not satisfy the twin test mentioned therein. Accordingly, it is submitted on behalf of the revenue to reject the application filed on behalf of the applicant.

4. In view of the rival submissions advanced on behalf of the parties, the vital question that requires consideration by this forum within the purview of Sec. 78-A(1) of the OVAT Act is as to "whether Ayurvedic cosmetics, i.e. medimix soap, talcum powder, prickle heat

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powder etc. are Ayurvedic medicines/cosmetics coming under SI. No.46 of Part-II of Schedule-B of the OVAT Act ?”

Before delving into the matter in details in this regard, it would be apt at the outset to quote the relevant SI. No.46 of Part-II of Schedule B :-

“Drugs and medicines, whether patent or proprietary including vaccines, disposable hypodermic syringes, hypodermic needles, catguts, sutures, surgical dressings, medicated ointments produced under licence issued under the Drugs and Cosmetics Act, 1940 (23 of 1940).

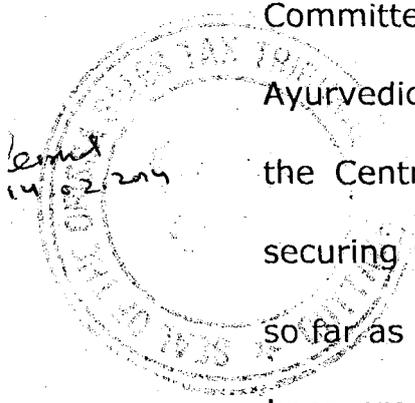
Excluding all Pharmaceutical Oral Liquid Preparations others than Homeopathic and Ayurvedic drugs containing absolute alcohol 20% v/v or more in the finished product.”

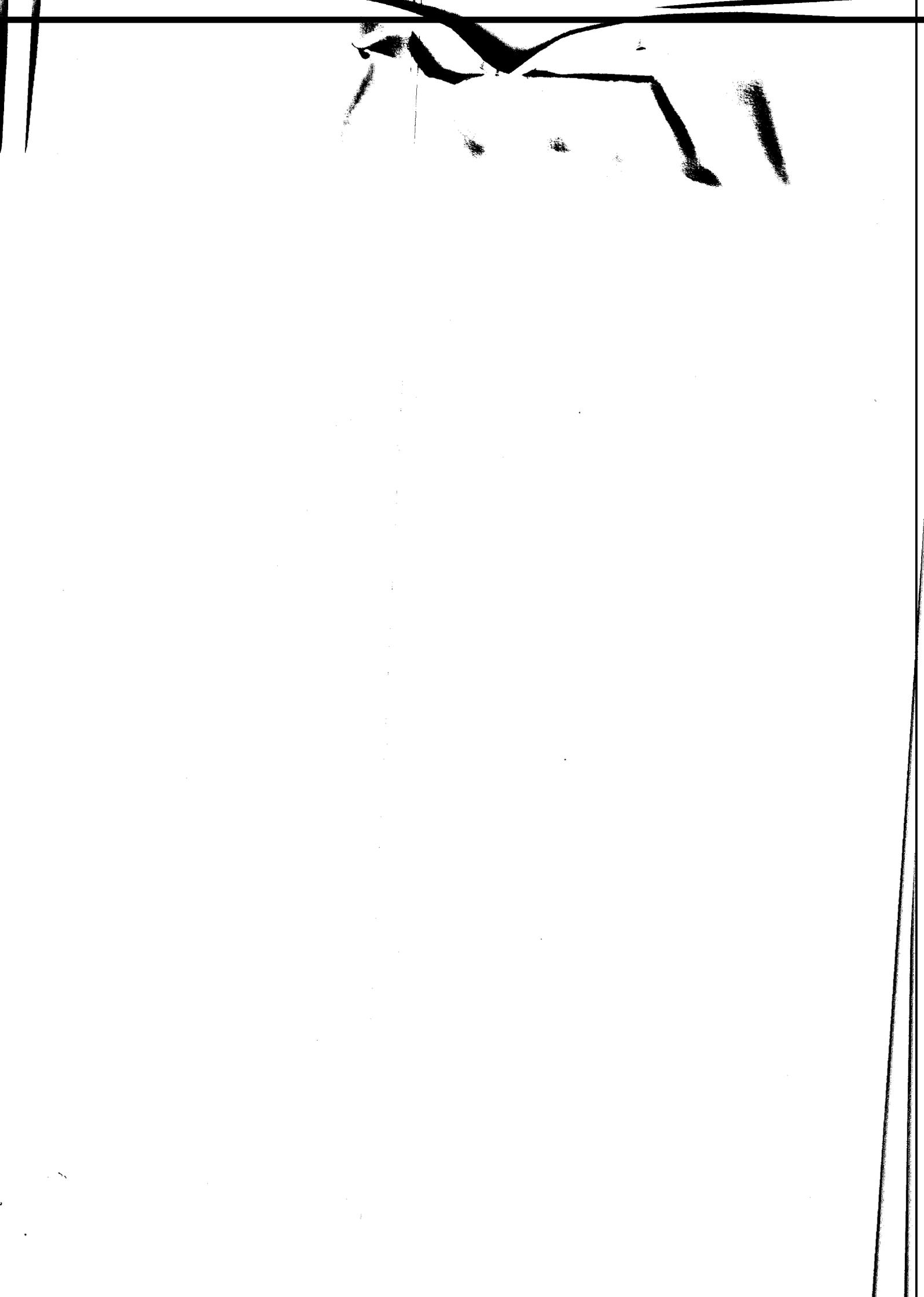
Keeping in view the aforesaid entry, the contention of the applicant that the Ayurvedic cosmetics are also covered under the said entry seems to be without any substance.

Further, on perusal of the said entry, it clearly reveals that the drugs and medicines and other allied items mentioned thereunder produced under licence issued under the Drugs and Cosmetics Act, 1940 are liable to pay VAT @ 5%. But herein this case, on perusal of the documents relied upon by the learned counsel for the applicant, no licence is forthcoming having been issued by the competent authority under the Drugs and Cosmetics Act for the purpose. In absence of such vital document, prima facie, the

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commodities in question cannot be treated as drugs and medicines. Further, the other documents relied upon by the applicant cannot be pressed into service in support of the claim of the applicant in view of the fact that the authorities having issued the said certificates appear to have not been empowered under the Drugs and Cosmetics Act to issue such certificates. Further, as per Sec. 3(a) of Drugs and Cosmetics Act, "Ayurvedic, Siddha or Unani drug" includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of [disease or disorder in human beings or animals, and manufactured] exclusively in accordance with the formulae described in, the authoritative books of [Ayurvedic, Siddha and Unani Tibb systems of medicine], specified in the First Schedule". But, there is nothing in the present application filed on behalf of the applicant that the commodities confirm the requirement of the definition of Sec. 3(a) of the Drugs and Cosmetics Act. Further, as per Sec.33D of the said Act, the Advisory Committee constituted by the Central Government being called as Ayurvedic, Siddha and Unani Drugs Consultative Committee is to advise the Central or State Governments on any matter for the purpose of securing uniformity throughout India in the administration of this Act in so far as it relates to Ayurvedic, Siddha or Unani Drugs. No material has been produced by the applicant herein that the *commodities in question*





have got any approval of such Consultative Committee to be treated as Ayurvedic drugs.

5. During the course of hearing, a reference has been made on behalf of the revenue in the case of State of Goa Vs. Leukoplast India Ltd. (supra), wherein it has been observed by their Lordships that -

"In our view, whether the products manufactured by the assessee can be treated as "drugs and medicines" cannot be answered straightway. The medicinal content of the products, if any, has to be ascertained. Its curative function has to be found out. Can the product be called a medicament at all ? Is it used to cure or alleviate or to prevent disease or to restore health or to preserve health ? Are these products treated as drugs or medicines in common parlance ? These are basically questions of facts ..."

The tests or the requirements as observed by the Hon'ble Apex court in the aforesaid judgment appear to have not been clearly mentioned in the petition filed by the applicant to make out a case in his favour. The respondent-revenue has already placed reliance in another decision of the Hon'ble Apex Court in the case of Sunny Industries Pvt. Ltd. Vs. Collector of Central Excise (supra), wherein it has been held -

"Therefore, the product mainly oil containing some A&D vitamins which is used for massage, even if it prevents ailments of rickets and treats the same, it cannot be held to be medicaments."

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In the said decision, their Lordships have referred another decision in the case of Alpine Industries Vs. Collector of Central Excise, reported in 2003 (152) ELT 16 (SC), wherein it has been observed that –

“It is not disputed that the product ‘lip salve’ is used for care of the lips. It is a product essentially for ‘care of skin’ and not for ‘cure of skin’. It is, therefore, classifiable as a skin care cream and a medicament.”

Applying the aforesaid principle laid down by the Hon’ble Apex Court to the case in hand, it can well be held that the commodities in question being primarily bathing and toiletry goods, cannot be treated as drugs or medicines to fall within the scope of Sl.No. 46 of the Part-II of Schedule B (supra).

6. That apart, the Hon’ble High Court of Orissa in the case of State of Orissa Vs. Rajkumar Agarwalla, ILR 1974 Cuttack 1367 (Ori), have aptly observed with regard to the duty of the assessing authorities including the Tribunal in the matter of deciding the tax liability of a dealer as follows :-

“ ... It was the duty of the assessing authorities including the Tribunal to have called upon the dealer to give evidence as to the nature of the goods sold before holding that he was liable to sales tax. The assessing officer and the appellate authorities have merely indicated their subjective view without reference to objective factors which was absolutely necessary to determine the true character of the goods sold. Without materials on record

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it is not possible to say as to in which category the impugned goods sold would fall."

Herein this case, the applicant admittedly has not been able to furnish all the required documents within the purview of Drugs and Cosmetics Act in support of its claim at the time of hearing to satisfy this forum with regard to the nature of commodity so as to come within Sl.No.46 of the Part-II of Schedule-B. Thus, in absence of any sufficient/satisfactory materials on record, it is also not possible on our part to issue any clarification on the relevant question as sought for by the applicant.

In view of our foregoing discussions, we hold that the application filed on behalf of the applicant seeking advance ruling deserves no consideration and the same is liable to be rejected.

7. Hence, the application filed by the applicant stands rejected.

Dictated & Corrected by me,

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14.02.2014
(M.S. Dhal)
Chairman

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14.02.2014
(M.S. Dhal)
Chairman

I agree,

Handwritten signature
(A.K. Mohapatra)
2nd Judicial Member 14-2-2014

I agree,

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(J. Pradhan) 14/2/14
Accounts Member-II

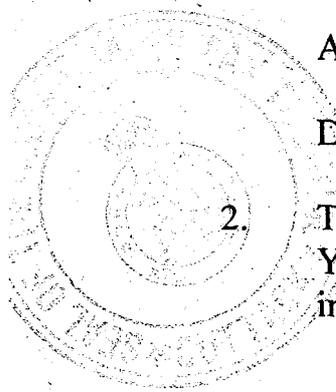
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Memo No. 861 /Trl.,dt. 20.3.2014

Copy of the order forwarded to

1. The Dealer : Cholajol Pvt. Ltd
 A.T./P.O. : Chandrament Road
 District : Cuttack

2. The State in triplicate along with the L.C.R. for the
 Year _____ containing _____ pages for
 information.



[Signature]
 Registrar, 20.3.14
 Odisha Sales Tax Tribunal,
 Cuttack.

[Signature]



In view of our foregoing discussions, we hold that the application filed on behalf of the applicant seeking advance ruling deserves no consideration and the same is liable to be rejected.

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Dictated & Corrected by me,

[Signature]
 (M.S. Dhal)
 Chairman

[Signature]
 (M.S. Dhal)
 Chairman

I agree,

[Signature]
 (A.K. Mohapatra)
 2nd Judicial Member 14-2-2014

I agree,

[Signature]
 (J. Pradhan) 14/2/14
 Accounts Member-II