

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	INDRANIL CHATTERJEE
Address	61/1, Moore Avenue, Regent Park, Kolkata-700040
GSTIN	Unregistered
Case Number	WBAAR 16 of 2023
ARN	AD1905230074464
Date of application	May 15,2023
Order number and date	19/WBAAR/2023-24 dated 10.08.2023
Applicant's representative heard	Mr. Ankit Kanodia, Authorised Advocate

1.1 At the outset, we would like to make it clear that the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant intends to produce JAC OLIVOL BODY OIL classified as Ayurvedic patent & proprietary Medicine and inter alia the applicant is in advanced stages of entering in to contract manufacturing agreement with the trade name owners of the said product.

1.3 The applicant submits that JAC OLIVOL BODY OIL is in the market for more than two decades, being granted with a licence under section 3(4) of the Drug and Cosmetic Act, 1940, inter alia, an ayurvedic patent and proprietary medicine.

1.4 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling as to whether the product manufactured & sold by the applicant shall fall under HSN No. 3004 or under HSN 3304 of the GST Tariff.

1.5 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.


1.7 The application is, therefore, admitted.

2. Submission of the applicant

The submission of the applicant is that:

2.1 The product intended to be manufactured i.e. Jac Olivol Body Oil is an ayurvedic patent & proprietary medicine which is clearly described in its label, incidentally protected by copyright and trademarks.

The label representing the product in question, as incorporated in the written submission and sent by the authorised advocate of the applicant through e-mail on 28.07.2023 is as below:

<p>AN EFFECTIVE HERBAL BODY OIL FOR SOFT SMOOTH GLOWING SKIN Jac Olivol Herbal Body Oil is a unique invention. On dry skin this oil is more effective than conventional moisturiser. This oil contains Italian Olive Oil with various other complimentary oils and is enriched with various herbal extracts which gives you lovely supple blemish – free skin. This Oil is totally nonsticky, immediately absorbs in the body, after application it leaves no stain on the dress. On gentle massage of entire body, it gives you a glow all over the body.”</p> <p>Apply daily before or after bath All over your body</p> <p>In winter : Before bath In Summer : After bath</p>	<p>FOR SOFT, SMOOTH GLOWING & HEALTHY SKIN</p> <p>With Italian Olive Oil</p> <p>JAC OLIVOL</p> <p>AN EFFECTIVE HERBAL</p> <p>BODY OIL</p> <p>Net 500 ml</p>	<p>AYURVEDIC PROPRIETARY MEDICINE</p> <p>EACH 5 ML CONTAINS</p> <p>Aguas Extract of :</p> <table><tr><td>Haridra – 0.0025 g</td><td>Arachis Oil – 0.45 ml,</td></tr><tr><td>Manjistha – 0.0025 g</td><td>Olive Oil – 0.025 ml</td></tr><tr><td>Arjuna – 0.0025 g</td><td>Colour – Yellow</td></tr><tr><td>Daruharidra – 0.0025 g</td><td>Perfume (Sandal) – 0.05 g</td></tr><tr><td>Kapoor – 0.0025 g</td><td>BHT – 0.0005 g</td></tr><tr><td>Neem Oil – 0.005 ml</td><td></td></tr></table> <p>In the base of Light Liquid Paraffin Q. S. to 5 ml</p> <p> TRADEMARK & MARKED BY : JAC OLIVOL PRODUCTS (P) LTD., JANGALPUR, Howrah – 711 302 MFG Lic. No. AL-170-M(L) At : MONSONS INT'L, 140, Steam Laundry More, Brahmapur, Garia, Kolkata – 700 096 Customer Care : 033 2225 9377</p> <p>BATCH NO. : DT. OF MFG : DT. OF EXP : M.R.P : (INCL. OF ALL TAXES)</p>	Haridra – 0.0025 g	Arachis Oil – 0.45 ml,	Manjistha – 0.0025 g	Olive Oil – 0.025 ml	Arjuna – 0.0025 g	Colour – Yellow	Daruharidra – 0.0025 g	Perfume (Sandal) – 0.05 g	Kapoor – 0.0025 g	BHT – 0.0005 g	Neem Oil – 0.005 ml	
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2.2 The product in question is being used as an ayurvedic patent and proprietary medicine and that all ingredients used to produce the material are mentioned in the Ayurvedic pharmacopoeia and authoritative textbooks of Ayurveda (Bhavprakash) and inter alia approved by the Drug Controller.

2.3 The applicant states that as per the prevailing rate structure, the best classification of the product has to be done under HSN 3004 thereby attracts tax @ 12% of goods specified in Schedule II as below:

S.No.	Chapter / Heading / Subheading /Tariff Item	Description of Goods
(1)	(2)	(3)
63	3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale.

2.4 The Applicant states that as the definition of the term, “medicament” has not been explicitly provided anywhere in the Drugs and Cosmetics Act, 1940, the WBGST Act, 2017, the CGST Act, 2017, the IGST Act, 2017, the Customs Tariff Act, 1975, or Rules framed there under, the word must be construed in its popular sense i.e., how the common man who uses it, comprehends it.

The term “medicament” as defined in the Oxford Dictionary as “a substance used for medical treatment”, As per McMillan Dictionary “medicament” is 'a substance used for treating an illness or injury'. The American Heritage Medical Dictionary defines it as 'An agent that prompts recovery from injury or ailment, a medicine’.

2.5 The Applicant states that the principals have manufactured this body oil using herbal ingredients and is used primarily to cure dry skin, relieves body ache, joint & knee pains, minor burns and prevents blisters. The Applicant further states that this oil has certain skin care properties as well i.e., it helps in softening and moisturizing the skin and also prevents premature ageing and wrinkling.

2.6 The Applicant states that for a product to be classified as a medicament, it is important that the product has either of the two qualities i.e., therapeutic or prophylactic. Even if a

product is manufactured using ingredients regulated under the Drugs and Cosmetics Act and according to the formula prescribed in the Pharmacopoeia, it cannot be classified as a medicament under Heading 3004 unless it is meant for therapeutic or prophylactic uses.

2.7 The term therapeutic as defined in the Oxford Dictionary is a treatment designed to help/treat an illness. As per Collins Dictionary, therapeutic treatment is designed to treat an illness or to improve a person's health, rather than to prevent an illness. Similarly, the dictionary meaning of Prophylactic Uses is a substance or device used for preventing disease.

2.8 The Applicant states the ayurvedic herbs used in the preparation of oil have therapeutic properties which is to be applied on the body and not consumed orally. The Applicant further states that the product ingredient includes –

Haridra (Rz.) – Also known as turmeric has long historical background of having healing properties against many diseases. The rhizome of the herb used either fresh or dried, has a host of medicinal benefits. It has been used extensively in Ayurvedic medicine for centuries, as it is nontoxic and has a variety of therapeutic properties including antioxidant, analgesic, anti-inflammatory and antiseptic activities. Its antibacterial and antiseptic agent helps in curing minor burns, cuts, bites and bruises. It also helps in cleanse, clarify, smooth, calm, invigorate and brighten the skin.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 1, Page No. 45, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 114]

Manjistha (St.) – Manjistha is a perennial herb that is used as Ayurvedic medicine, Manjistha is believed to have antioxidant and astringent properties. Ayurvedic uses of Manjistha include skin allergy treatments, healing wounds, alleviating muscle aches and soothing insect bites. Manjistha has antioxidant, antimicrobial and anti-inflammatory properties. It is used to treat variety of ailments due to its diverse therapeutic properties.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 3, Page No. 112, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 110]

Arjuna (Bk.) – Arjuna bark extract (Arjuna chaal) prevents skin aging. Aging is associated with an increase in the number of free radicals. Arjuna has good antioxidant property that prevents skin damage caused by these free radicals. It helps in the formation of new skin cells, hydrates the skin and improves skin elasticity.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 2, Page No. 17, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 523]

Daruharidra (Hw.) – Like Haridra, it is an ayurvedic herb and has a skin healing property. Daruharidra is mainly beneficial for skin problems like inflammation and psoriasis as it has anti – inflammatory and anti – psoriatic activity. It helps in managing acne by preventing the growth of acne causing bacteria and reducing inflammation due to its antibacterial and anti – inflammatory properties.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 2, Page No. 33-36, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 119-120]

Karpoor – Has a therapeutic property and can help reduce chronic muscle and joint pain over longer periods. Helped relieve lower back pain.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 6, Page No. 210, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 173.]

Neem Oil – Neem oil has a long history of use in Ayurvedic medicine. Neem oil contains fatty acids, antioxidants and antimicrobial compounds and these can benefit the skin in a range of ways. Research shows that these compounds may help fight skin infections, promote wound healing and combat signs of skin aging.

[Ref : The Ayurvedic Pharmacopoeia of India, Government of India, Vol. 5, Page No. 124, Bhavaprakasa, An Authentic Ayurvedic Book, Page No. 329]

Anyhydrous lanolin – This medication is used as a moisturizer to treat or prevent dry, rough, scaly, itchy skin and minor skin irritations.

[Ref : I. P. Vol. 2010, Page No. 2317]

Arachis Oil – It alleviates dry skin conditions such as rashes and flaky and itchy skin. In addition to soothing minor irritations, peanut oil may also reduce the appearance of redness. It contains powerful antioxidants, such as Vitamin E and resveratrol which calm down irritated skin.

[Ref : I. P. Vol. 2010, Page No. 2475]

Olive Oil – Olive Oil packed with healthy vitamins, fats and antioxidants and these components can contribute to healthier – looking skin. It moisturizes skin by locking in moisture and its antioxidants can help to improve signs of aging.

[Ref : ISI (ICS) Page No. 67]

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2.9 The Applicant states that product in question is clearly a herbal oil, intended to cure dry skin, heal wounds, reduces chronic muscle pain and joint pain but also have properties such as anti- ageing and anti-wrinkling which is consequential to the predominant purpose.

2.10 The Applicant states that apart from its curative properties, a gentle massage with this body oil provide a protective barrier to keep the skin hydrated and improves blood circulation and can help to reduce anxiety as well. Further the anti-ageing and anti-wrinkling properties available in this oil is due to the inherent benefits of herbs used in making this oil. The Applicant further states that the product's curative or preventive value is substantial, and the product is manufactured primarily to treat body aches and pains of muscles and joints, control or cure a disease, and the consumers use it primarily as a pain relief oil and for treatment, mitigation, cure or prevention of skin ailments.

2.11 The Applicant submits that it is the essential character of any oil to soften, supple and moist the skin when applied on the skin. The Applicant further states that in most part of our country, people have been applying mustard oil to keep the skin hydrated but that doesn't make mustard oil a cosmetic product.

2.12 The Applicant further states that in general trade parlance, the people use face oil, face serum or face cream to reduce fine lines and wrinkles and they will never apply body oil on face. Face oils or face serums are classically designed to penetrate into the skin and regulate its internal functions. Body oils are simply those oils you can use below your neck or on your body. Body oils penetrate deep into the skin, locking in moisture and preventing dryness. Oils are natural emollients. That means they are formulated to mimic the natural lipids found in our skin, which support the skin barrier. What differentiates the body oil from the face oil, face serums, etc. is the fatty content that the oil contains which is important to prevent skin aging.

2.13 The Applicant further relies on the latest judgment of the Hon'ble Supreme Court of India Commissioner Of Customs, Central Excise And Service Tax, Hyderabad Versus Ashwani Homeo Pharmacy in Civil appeal No. 9525 of 2018 dated 03.05.2023 wherein in a similar issue at hand regarding the classification of the product as medicament or cosmetic, it was ruled by the Hon'ble Supreme Court as-

“103. As noticed, in Chapter 30, apart from Heading 3003 relating to medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses not put up in measured doses or in forms or packing for retail sale, Heading 3004 pertains to the medicaments consisting of mixed or un-mixed product for therapeutic or prophylactic uses put up in measured doses or in form of packing for retail sale.

Viewed thus, we are inclined to accept the submissions on behalf of the respondent that even with reference to its packaging, the product AHAHO would remain a homeopathic medicament and would be covered under Chapter 30, where it could be placed in Sub-Heading 3004 90 14. Similarly, deletions of the reference to the Act of 1940 or to various pharmacopoeia cannot be interpreted to mean that a product like the one in question, which is otherwise a medicament, has to be classified on the basis of the base through which the application of medicine is being provided.

2.14 The Applicant relies on the judgement of Divisional Bench of Uttarakhand in the case of **The Commissioner Commercial Tax Uttarakhand Vs Perfetti Van Melle India Pvt Ltd** 2018 SCC OnLine Utt 113 : (2009) 19 VST 218 , Wherein it has been held that “10. It is not disputed that there are three kinds of medicines available in the market. Firstly, the medicines which can be purchased from only approved chemist/pharmacist that too only on the prescription of the registered medical practitioner. Secondly, the medicines, which can be purchased from approved chemist/pharmacist but not necessarily required to be prescribed by registered medical practitioner. And thirdly, the medicines, which can be purchased without prescription of any medical practitioner and can be had not only from the shops of the approved chemists but also from other shops. It is not disputed that “even those products containing formulae of constituents prescribed by authorised books of medicines, which are not prescribed by doctors and not required to be purchased necessarily from the approved chemists are also medicines, provided the same are manufactured under the drug licence issued under the Drugs and Cosmetics Act, 1940. In the present case, the items—”Chlormint” and “Happydent” are manufactured by the assessee/respondent under the drug licence issued to it by the Directorate of Ayurvedic Medicines of State of Haryana. As to the formulations, the quantity of “Chlormint with herbasole” and “Happydent” are also mentioned in the covers they are sold (as is apparent from annexures filed with counter-affidavit). As to the utility of “Chlormint with herbasole” as mouth fresheners and that of “Happydent” (white baking soda with mint flavour) to keep the teeth clean, are also not disputed. Only for the reasons these items are also purchased by some customers for taste also, does not make them confectionary items particularly when the same are manufactured under a valid drug licence. As such, having heard learned counsel for the parties, and after going through the principle of law laid down in Puma Ayurvedic Herbal (P.) Ltd. v. Commissioner Central Excise, Nagpur, [2006] 145 STC 200 (SC); (2006) 3 SCC 266 and Naturalle Heath Products (P.) Ltd. v. Collector of Central Excise, Hyderabad, [2003] 1 RC 952; (2004) 9 SCC 136, and for the reasons discussed above, we hold that items—”Chlormint with herbasole” and “Happydent” manufactured by the assessee under valid drug licence are ayurvedic medicines and trade tax payable on said items is four, per cent as provided in clause (b) of sub-section (2) of section 4 of the

Uttaranchal Value Added Tax Act, 2005. However, applying the same principles as discussed above, we hold that other items, i.e., “Chlormint candy”, “Chlormint ice”, “Chlormint gum”, “Gum draggy”, “chewable gum draggy” and “Chatar patar”, manufactured and sold by the assessee/respondent, cannot be said to be ayurvedic preparations as in respect of these items it is not shown that the same are according to formulations prescribed by authoritative books of ayurvedic medicines. Therefore, charging of 12.5 per cent trade tax in respect of these items cannot be said to be wrong.

2.15 In case of **CCE v. Wockhardt Life Sciences Limited** (2012) 5 SCC 585 the Hon’ble Apex Court while discussing the Interplay of Chapter 30 vis-à-vis Chapter 34 (which deals with detergent products), observed that: “39. In our view, as we have already stated, the combined factors that require to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put.”

2.16 The Applicant relies on the Judgement of Hon’ble Apex court in case of **Commissioner of Central Excise, Mumbai IV Vs Ciens Laboratories** (2013) 14 SCC 133 wherein The Hon’ble Supreme Court of India formulated the following principles for determining the nature of a product as to whether it is a medicament or a cosmetic:

“22. Thus, the following guiding principles emerge from the above discussion.

22.1. Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic.

22.2. Secondly, though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments.”

2.17 The Appellant also places its reliance on the judgment of the Hon’ble Supreme Court of India in the case of **CCE v. Hindustan Lever Ltd.**, (2015) 10 SCC 742 wherein the Hon’ble Supreme Court remarked as-

“17. As pointed out above, the product in question, Vaseline Intensive Care Heel Guard, is marketed as a solution for cracked heels and it is claimed that this solution is specially developed by the scientists at Vaseline Research. The composition of this product includes salicylic acid I.P. 1.5% w/w., lactic acid 8.0% w/w., Triclosan 0.1% w/w., Cream base — q.s. salicylic acid is described as keratolytic substance having bacteriostatic and fungicidal

properties used in the treatment of fungus infection of the skin. The Tribunal, while deciding that the aforesaid product is a medicament, pointed out that the product was formulated and essentially used for treatment of “cracked heels”, protection from further cracks in the human heels due to extreme climatic conditions and low humidity, constant exposure of feet to water and due to absence of shoe or other protection while walking. It also found that this product was manufactured under a drug licence as drug authorities had treated the same as a medicament. The Tribunal also found that the usage of this product was related to the effect of therapeutic or mitigating substance of prophylactic substances added. Thus, the effect of mitigation of an external condition is primary effect and the effect of smoothing the skin was secondary in nature and, therefore, it was to be treated as a medicament and classified under Chapter 30.”

2.18 In course of personal hearing, the authorized advocate of the applicant further submits that as per Indian legal system, a separate ministry AYUSH exists under the Ministry of Health, Union of India which stands for-

A= AYURVEDA

Y=YOGA

U=UNANI

S= SIDHDHA

H= HOMOEOPATHY

Previously this was named as Indian System of Medicine and Homoeopathy.

Whereas the allopathic medicines, are simply known as modern medicines and dealt by a separate department of the Drug Controller, Ayurvedic medicines do not require any selling licence. The same was confirmed by the Minister of State, AYUSH(IC) in a written reply to a question in Rajya Sabha.

2.19 The authorized advocate also draws attention to the definition of Ayurvedic Drugs stating that the legal definition of Ayurvedic drug is given in Section 3(a) the Drugs and Cosmetics Act, 1940, which 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 system specified in the First Schedule of the Act. Patent or Proprietary medicines in relation to Ayurvedic system are all formulations containing only such ingredients, which are mentioned in the formulae described in the authoritative books of Ayurvedic specified in the First Schedule of the Drugs and Cosmetics Act and does not include a medicine administered by parenteral route and also a formulation included in the authoritative books as specified in clause (a) of section 3 of the Act.

2.20 The authorised advocate has further placed his reliance on the following judgements:

- (i) Puma Ayurvedic Herbal (P) Ltd vs CCE, (2006) 3 SCC 266
- (ii) CCE v. Sharma Chemical Works, (2003) 5 SCC 60
- (iii) CCE v. Ishaan Research Lab (P) Ltd., (2008) 13 SCC 349

2.21 The authorised advocate of the applicant draws attention to para 21 and 22 of the judgement rendered by the Hon'ble Apex Court of India in the matter of Puma Ayurvedic Herbal (P) Ltd vs CCE. The same are reproduced below:

“The extent or the quantity of medicament used in a particular product will also not be a relevant factor. Normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. The medical ingredients are mixed with what is in the trade parlance called fillers or vehicles in order to make the medicament useful. To illustrate an example of Vicks Vaporub is given in which 98% is said to be paraffine wax, while the medicinal part i.e. Menthol is only 2%. Vicks Vaporub has been held to be medicament by this Court in CCE vs. Richardson Hindustan Ltd. 1989 (42) ELT A100. Therefore, the fact that use of medicinal element in a product was minimal does not detract from it being classified as a medicament.” [para 21]

“In order to be a medicinal preparation or a medicament it is not necessary that the item must be sold under a doctor's prescription. Similarly availability of the products across the counter in shops is not relevant as it makes no difference either way.” [para 22]

2.22 Thus, the Applicant states that on the basis of the above judicial pronouncements and applying the same in the present case of the applicant, the product in question is a medicament and deserves to be classified under Customs Tariff Head 3004 attracting GST @ 12%.

3. Observations & Findings of the Authority

3.1 We have gone through the records of the issue as well as submissions made by the authorised advocate of the applicant during the course of personal hearing.

3.2 The applicant intends to produce JAC OLIVOL BODY OIL claiming that the product is used primarily to cure dry skin, relieves body ache, joint & knee pains, minor burns and prevents blisters. The only question involved in the instant case is to decide whether the product falls within the category of medicaments or cosmetics. To answer the question, we need to determine whether the goods is classifiable under the Central Excise Tariff Act, 1985 as medicaments under Chapter 30 or as cosmetics under Chapter 33.

3.3 Heading 3004 of the Customs Tariff covers MEDICAMENTS (EXCLUDING GOODS OF HEADING 3002, 3005 OR 3006) CONSISTING OF MIXED OR UNMIXED PRODUCTS FOR THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED DOSES (INCLUDING THOSE IN THE FORM OF TRANSDERMAL ADMINISTRATION SYSTEMS) OR IN FORMS OR PACKINGS FOR RETAIL SALE. Further, note 1(e) of Chapter 30 excludes preparations of headings 3303 to 3307 even if they have therapeutic or prophylactic properties. On the other hand, heading 3304 of the Customs Tariff covers BEAUTY OR MAKE-UP PREPARATIONS AND PREPARATIONS FOR THE CARE OF THE SKIN (OTHER THAN MEDICAMENTS), INCLUDING SUNSCREEN OR SUNTAN PREPARATIONS; MANICURE OR PEDICURE PREPARATIONS. Thus, it is evident that the 'use' of the goods and not its properties is to be considered as a decisive factor to classify the goods as 'medicament'.

3.4 The applicant has expressed his views that the goods intended to be manufactured by him falls under the category of 'medicaments' and the contention of the applicant in this regard may be summarized as follows:

- All the ingredients used to manufacture the goods are mentioned in the Ayurvedic pharmacopoeia and authoritative textbooks of Ayurveda (Bhavprakash) and inter alia approved by the Drug Controller.
- The ayurvedic herbs used in the preparation of oil have therapeutic properties which are to be applied on the body and not consumed orally.
- The product in question is clearly a herbal oil, intended to cure dry skin, heal wounds, reduces chronic muscle pain and joint pain but also have properties such as anti- ageing and anti-wrinkling which is consequential to the predominant purpose.
- The product's curative or preventive value is substantial and the consumers use it primarily as pain relief oil and for treatment, mitigation, cure or prevention of skin ailments.

In addition to this, the applicant has placed his reliance on a number of judgements rendered by Hon'ble Supreme Court of India and other High Courts on classification issue.

3.5 The meaning of the term 'therapeutic' as referred by the applicant from the Oxford Dictionary is a treatment designed to help/treat an illness and that from the Collins Dictionary, therapeutic treatment is designed to treat an illness or to improve a person's health, rather than to prevent an illness. On the other hand, the dictionary meaning of 'prophylactic' is 'something that is intended to prevent diseases' [Cambridge Dictionary]. Any product can be classified as a medicament under Chapter Heading 3004 provided the

product has either of the two uses i.e. therapeutic or prophylactic. Further, as per clause (aaa) of section 3 of the Drugs and Cosmetics Act, 1940, "cosmetic" means *any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic.*

3.6 Thus, a product cannot be classified as a medicament only for the reason that it is manufactured using ingredients regulated under the Drugs and Cosmetics Act. There must be therapeutic or prophylactic uses of the product and the product must be manufactured primarily to control or cure a disease.

3.7 In matters of classification of goods, the common parlance test i.e., how the goods is understood in the market by common people has been recognized by all the judicial forums including the Supreme Court of India. The Hon'ble Apex Court in the case of **Commissioner of Central Excise vs Baidynath Ayurved Bhawan Ltd** has observed as follows:

*"As a matter of fact, this Court has consistently applied common parlance test as one of the well recognized tests to find out whether the product falls under Chapter 30 or Chapter 33. In a recent decision in **Puma Ayurvedic Herbal (P) Ltd. vs. Commissioner, Central Excise, Nagpur 10** this Court observed that in order to determine whether a product is a cosmetic or medicament, a twin test (common parlance test being one of them) has found favour with the courts. This is what this Court observed:*

"... In order to determine whether a product is a cosmetic or a medicament a twin test has find favour with the courts. The test has approval of this Court also vide CCE v. Richardson Hindustan {(2004) 9 SCC 156}. There is no dispute about this as even the Department accepts that the test is determinative for the issue involved. The tests are:

- I. Whether the item is commonly understood as medicament which is called the common parlance test. For this test it will have to be seen whether in common parlance the item is accepted as a medicament. If a product falls in the category of medicament it will not be an item of common use. A user will use it only for treating a particular ailment and will stop its use after the ailment is cured. The approach of the consumer towards the product is very material. One may buy any of the ordinary soaps available in the market. But if one has a skin problem, he may have to buy a medicated soap. Such a soap will not be an ordinary cosmetic. It will be medicament falling in Chapter 30 of the Tariff Act.*

II. Are the ingredients used in the product mentioned in the authoritative textbooks on Ayurveda?”

* * * * *

“We endorse the view that in order to determine whether a product is covered by ‘cosmetics’ or ‘medicaments’ or in other words whether a product falls under Chapter 30 or Chapter 33 : twin test noticed in Puma Ayurvedic Herbal (P) Ltd., continue to be relevant. The primary object of the Excise Act is to raise revenue for which various products are differently classified in New Tariff Act. Resort should, in the circumstances, be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used. The approach of the consumer or user towards the product, thus, assumes significance. What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user’s understanding is a strong factor in determination of classification of the products.”

3.8 In **Alpine Industries vs Collector Of Central Excise, New Delhi**, (2003) 3 SCC 111 the issue before the Hon’ble Apex Court was to decide classification of the product ‘Lip Salve’, manufactured in accordance with the defence services specifications and supplied entirely to military personnel. The Hon’ble Supreme Court, while held the item as a preparation for protection of lips and skin and is not a ‘medicament’ observed as follows:

“It is well established that in interpreting tariff entries in taxation statute like Excise Act where the primary object is to raise revenue and for that purpose various products are differently classified, the entries are not be understood in its scientific and technical meaning. The terms and expressions used in tariff have to be understood by their popular meaning that is the meaning that is attached to them by those using the product. See the decision of Supreme Court on the dispute regarding classification for excise duty, the product-Dant Manjan Lal manufactured by Shree Baidyanath Ayurved Bhavan Ltd. reported in the case of **Shree Baidyanath Ayurved Bhavan Ltd v. Collector of Central Excise, Nagpur and Ors.**, [1996] 9 SCC 402. The manufacturer claimed the product to be an ayurvedic medicina preparation product for dental care. The view of the Tribunal was upheld by this court by 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.’”

“It is firmly established that on the question of classification of product under Central Excise Tariff Act, “commercial parlance theory” has to be applied. It is true that the entire supply by the appellant of its product ‘Lip Salve’ has been to the Defence Department for use of military personnel but that would also not be determinative of the nature of the product for

classifying it. It is not disputed that the product 'Lip Salve' is used for the 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 not a medicament. From the nature of the product and the use to which it is put, we do not find that the claim of the appellant is acceptable that it is primarily for therapeutic use. What we find from the material produced before the Tribunal is that essentially the product is a protective/preventive preparation for chapping of lips. It is not a curative product maybe that incidentally on cracked and chapped lips, it has some curative effect. It is also not denied that the product 'Lip Salve' is not suitable for use only for soldiers operating in high altitude areas but it is of use for every one as protection from dry, cold weather or sun rays. The product, therefore, essentially is protective of skin of lip. It is lip care product and not a 'medicament'. It is neither prescribed by any doctor nor obtainable from the Chemist for Pharmaceutical shops in the market."

3.9 The applicant, in support of his contention, has relied on a recent judgment of the Hon'ble Supreme Court of India *in re Commissioner of Customs, Central Excise and Service Tax, Hyderabad versus Ashwani Homeo Pharmacy* (Civil appeal No. 9525 of 2018 dated 03.05.2023). In the aforesaid case, the adjudicating authority held that the product in question, known as "Aswani Homeo Arnica Hair Oil" (AHAHO) could not be classified as 'medicament' under Tariff Item 3003 90 14 or under any item stated in Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 and that the product in question, being "Hair oil", was required to be classified as 'cosmetic' under Tariff Item 3305 90 19. The appeal preferred by the respondent was allowed by the Tribunal and the order passed by the adjudicating authority was set aside. The Tribunal held that the product in question, AHAHO, fell in the category of 'medicament' and hence, was rightly classified under Chapter 30 of the First Schedule to the Act of 1985. The Hon'ble Apex Court upheld the order of the Tribunal and classified the product AHAHO as a homeopathic medicament covered under Chapter 30 and placed the product in Sub-Heading 3004 90 14.

3.10 The relevant extracts from the said judgment throwing light on these aspects are reproduced below:

*"Another essential feature while examining the question as to whether a particular product is classifiable as medicament under Chapter 30 or as cosmetic under Chapter 33 would be as to whether the preparation is essentially for cure or prevention of disease i.e., with therapeutic or prophylactic properties or only for care. Tersely put, when the preparation is for cure or prevention, it would be medicament but, if only for care, it would be cosmetic. Of course, a cosmetic would not become medicament even if having subsidiary curative or prophylactic value, as held by this Court in **Alpine Industries** (supra). However, the product in question, AHAHO, does not fail on this count for the reason that it is a preparation of*

Homeopathic medicine and when it is marketed as carrying those medicines, in commercial as also common parlance, with its name carrying the significant expressions “Homeo” and “Arnica”, the product could only be understood as the one carrying predominantly pharmaceutical value and not mere cosmetic value.” [Para 26]

“The substance of the matter remains that in common parlance, the product in question would be approached essentially for its claimed medicinal qualities and not as another hair oil. This aspect, in our view, is itself sufficient to reject the contentions of the appellant and the observations of the Adjudicating Authority.” [Para 27.1]

“The only relevant aspect for the present purpose is that the product in question being manufactured as a Homeopathy medicine, and being marketed and used as a Homeopathic medicine for its pharmaceutical value, would fall in Chapter 30 and cannot be branded as cosmetic, so as to fall under Chapter 33 of the First Schedule to the Act of 1985.” [Para 28]

3.11 In **Ponds India Ltd. vs Commissioner of Trade Tax, U. P., Lucknow** [2006] 147 STC 442 (All), the question before the Hon’ble Allahabad High Court was to decide whether white petroleum jelly, which is commonly known as Vaseline is liable to tax under the entry “all kinds of cosmetics. . .” or as “medicine”. The Hon’ble High Court found following aspects to be relevant for the classification of product under the entry “cosmetic or toilet preparation” and medicine:

- (i) *How the product is known in common parlance and in commercial sense.*
- (ii) *The mere fact that the product has some curative effect is not enough to classify the product as a medicament.*
- (iii) *The mere fact that the product is being manufactured under a drug licence is not enough to classify the -product.*
- (iv) *The language of the entry has to be given effect.*
- (v) *How the product is known in scientific sense or technical sense is not much relevant.*
- (vi) *The dictionary meaning is a good guide but not conclusive.*
- (vii) *For being a medicine a product must have the effect either of curing the disease or preventing it and the intended use must be for treatment, mitigation or -prevention of disease and in common parlance and commercial sense known as medicine.*

- (viii) *Cosmetic and toilet preparations are products which are used for beautification or care of face, skin, hair, nails, eyes or brow and are known as cosmetic and toilet preparations in common parlance and commercial sense.*
- (ix) *The onus lies on the Revenue to prove that the product falls under a particular entry.*

3.12 We find that in **Ciens Laboratories** (supra), the Hon'ble Apex Court has also formulated following guiding principles in addition to what has already been referred by the applicant (refer to para 2.16):

“...prior to adjudicating upon whether a product is a medicament or not, Courts have to see what the people who actually use the product understand the product to be. If a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament.”

3.13 It thus appears that common parlance test is well recognized as one of the twin tests for the purpose of classification of a product as medicament or cosmetic. Therefore, to decide whether a product would be classified as medicament under heading 3004 of the Customs Tariff Act, the common parlance test shall be resorted to.

3.14 We find that in Ashwani Homeo Pharmacy (supra), the Hon'ble Apex Court held the product “Aswini Homeo Arnica Hair Oil” (AHAHO) as medicament since the product came clean through the twin test one of which is the common parlance test. The contention of the respondent in the case was that AHAHO is a therapeutic or prophylactic medicament in the medium of oil for curing diseases relating to the scalp and the product is not advertised as “Hair Oil” but is marketed only as “Aswini Homeo Arnica Hair Oil”. The Hon'ble Apex Court has also accepted that the expression “Hair Oil” does appear on the label, the other integral expressions “Homeo” and “Arnica” preceding the expression “Hair Oil” could not have been ignored and could not have been left aside.

3.15 However, in the instant case, the primary use of the product Jac Olivol Body Oil, as it appears from the label representing the product, is to care for skin. We find that the product is described as ‘For soft, smooth, glowing and & healthy skin’. We find that the product label, as submitted by the applicant in paper copy is not identical with what the authorized advocate sent through e-mail on 28.07.2023. For the sake of reference, both are reproduced below:

Product details as sent through e-mail:

“Jac Olivol Herbal Body Oil is a unique invention. On dry skin this oil is more effective than conventional moisturisers. This oil contains Italian Olive Oil with various other complimentary oils and is enriched with various herbal extracts which gives you lovely supple blemish-free skin. This Oil is totally non-sticky, immediately absorbed in the body, after application it leaves no stain on the dress. On gentle massage of entire body, it gives you a glow all over the body”

Product details as submitted in paper copy:

“Jac Olivol Herbal Body Oil is a unique invention. On dry skin this oil is more effective than conventional moisturisers. This oil contains Italian Olive Oil with various other complimentary oils and is enriched with various herbal extracts which gives you lovely supple blemish-free skin. This Oil is totally non-sticky, immediately absorbed in the body, after application it leaves no stain on the dress. On gentle massage of entire body, it relieves body ache, on joint pains including knee. It is very effective on minor burns and prevent blister. Tones muscles to prevent premature ageing and wrinkles. Guards against minor rashes, discolouration and dryness.”

However, both the labels also read “Apply daily before or after bath all over your body”. The labels further indicate the application of the product as “In winter: Before bath & In summer: After bath’.

3.16 We have also found that the product is also available on online platform. From the product description as declared on the web portal of different marketing companies, it appears that the use of the item is primarily for care of the skin. Following are the product description which is given as an illustrative manner only:

- *“For a soft, smooth, glowing and healthy skin, reach out for Jac OlivoL, which is enhanced with Italian olive oil. It has a light texture with sandalwood aroma and nourishes your skin with ayurvedic elements. Absorbed by skin easily. Makes skin soft, smooth and radiant. Effective herbal body oil”* [website of bigbasket]
- *“Jac for a soft, smooth, glowing and healthy skin, opt for Jac Olivol, which is enhanced with italian olive oil. It has a light texture with sandalwood aroma and nourishes your skin with ayurvedic elements. Absorbed by skin easily. Makes skin soft, smooth and radiant. Effective herbal body oil. Golden liquid of 500ml ensures healthy skin.”* [website of amazon.in]

3.17 From a bare reading of the product description as indicated on the label and also from the product description as declared to market the product , we are of the opinion that the primary use of the product is ‘to take care of the skin, and not to cure the skin’. We find it

apposite to reiterate the observation of the Hon'ble Apex Court in Puma Ayurvedic Herbal (P) Ltd (supra) as follows:

'If a product falls in the category of medicament it will not be an item of common use. A user will use it only for treating a particular ailment and will stop its use after the ailment is cured. The approach of the consumer towards the product is very material.'

The use of the product, we are dealing with in the instant case, is found to be in contrast with the aforesaid observation of the Hon'ble Apex Court. When the product itself proclaims to 'apply daily before or after bath all over your body', it is difficult for us to accept that people ordinarily buys it for treating of an ailment. In our view, the item namely JAC OLIVOL BODY OIL is commonly understood as a 'preparations for the care of skin' thereby considered to be a cosmetic product used to get soft and smother skin and not considered as a medicament used for the treatment or prevention of any disease or ailment. The applicant himself has submitted that even if a product is manufactured using ingredients regulated under the Drugs and Cosmetics Act and according to the formula prescribed in the Pharmacopoeia, it cannot be classified as a medicament under Heading 3004 unless it is meant for therapeutic or prophylactic uses. (refer para 2.6). In Ashwani Homeo Pharmacy (supra), in para 26, the Hon'ble Apex Court observed that '*a cosmetic would not become medicament even if having subsidiary curative or prophylactic value*'. Following the same principle, we are also unable to hold the product in question to be a medicament for the reason that the product's primary function is "care" and not "cure" even if have subsidiary curative or prophylactic properties.

In view of the above discussions, we rule as under:

RULING

The product JAC OLIVOL BODY OIL intended to be manufactured & sold by the applicant would be covered under Heading 3304 of THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT and would be taxed accordingly under the GST Act.

(Dr TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 10th August, 2023

To,

INDRANIL CHATTERJEE

61/1, Moore Avenue, Regent Park, Kolkata-700040

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) Office Folder

