

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:
Mr Navneet Goel, Member
Mr Devi Prasad Karanam, Member**

In the matter of

Appeal Case No. 06/WBAAAR/APPEAL/2023 dated 07.09.2023

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by Indranil Chatterjee, 61/1, Moore Avenue, Regent Park, Circus Avenue, Kolkata, Pin - 700040 against the Ruling passed by the West Bengal Advance Ruling Authority vide Advance Ruling Order No. ZD1908230145559 (19/WBAAR/2023-24 dated 10.08.2023).

Present for the Appellant: Mr. Ankit Kanodia, Advocate

Present for the Respondent: Not Applicable

Matter heard on: 08.01.2024 & 23.02.2024
Date of Order: 29.02.2024

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'SGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the SGST Act, 2017.

1. This Appeal has been filed by Indranil Chatterjee (hereinafter referred to as "the Appellant") on 07.09.2023 against Advance Ruling Order No. ZD1908230145559 (19/WBAAR/2023-24 dated 10.08.2023), pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the 'WBAAR').

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.
3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") seeking as to the classification of the namely JAC OLIVOL BODY OIL which as per the appellant is classifiable under HSN 3004 as a medicament attracting GST at the rate of 12% (6% CGST & 6% WBGST).
4. The WBAAR while giving the ruling observed that 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. The WBAAR also referred to the common parlance test in matters of classification of goods, i.e., how the goods is understood in the market by common people as 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. where it has been observed that:

"... 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}.

The tests are:

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.

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 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. [emphasis added]

5. The WBAAR also relied on the judgement of Hon'ble Supreme Court in *Alpine Industries vs Collector Of Central Excise, New Delhi*, [(2003) 3 SCC 111] where it has been observed that “*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.*” and that of Hon'ble Allahabad High Court in *Ponds India Ltd. vs Commissioner of Trade Tax, U. P., Lucknow* [(2006) 147 STC 442 (All)] where 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.*
6. Furthermore, the WBAAR had also relied on the judgements of the Hon'ble Supreme Court passed in the following cases:
 - (i) *Alpine Industries vs Collector of Central Excise, New Delhi*, [(2003) 3 SCC 111], and
 - (ii) *Hon'ble Allahabad High Court in Ponds India Ltd. vs Commissioner of Trade Tax, U. P., Lucknow* [(2006) 147 STC 442 (All)]
7. Accordingly, the WBAAR in its ruling held that:

“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.”

8. The Appellant has filed the instant appeal against the above-mentioned Advance Ruling dated 10.08.2023 with a prayer to set aside the said order.
9. The appellant has primarily presented the following points in their appeal:
 - (i) The brand Jac Olivol Body Oil is in the market for more than 2 decades being granted a licence under S. 3(4) of the Drug and Cosmetic Act, 1940, inter alia, an ayurvedic proprietary medicine.
 - (ii) That the product JAC OLIVOL is being used for curing the dead and dried skin, reducing muscle pain and joint pains but at the same time it also helps in preventing anti-ageing and wrinkles which is consequential to the predominant purpose.
 - (iii) That the ingredients of the product are mentioned in the Ayurvedic pharmacopoeia and authoritative textbooks of Ayurveda (Bhav Prakash) and inter alia approved by the Drug Controller, but these facts have been ignored by the Hon'ble WBAAR.
 - (iv) The product JAC OLIVOL being an herbal oil, is not a cosmetic product as it has therapeutic or prophylactic qualities, but the intrinsic properties of its components also make the skin soft and supple, the same is substantial to the principal intent of the product.
 - (v) “Medicament” has not been explicitly provided anywhere in the Drugs and Cosmetics Act, 1940, the GST Act, the Customs Tariff Act, 1975, or Rules framed there under, and thus the word must be construed in its popular sense i.e., how the common man who uses it or comprehends it.
 - (vi) That the appellant relied on the judgment of the Hon'ble court in the matter of Collector of Central Excise vs. CIENS Laboratories, wherein it has been held that *‘... 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.’*

- (vii) That the authority has wrongly interpreted the primary use of the product as 'care' because all the components of the product have medicinal curing properties intended to be used for treatment of diseases or disorder in human being.
- (viii) That the WBAAR has not given any basis of its findings that the product is commonly used in the market and used by the people not for medicinal benefits of the product but for soft skin and other anti-ageing capabilities.
- (ix) That JAC OLIVOL is made of the ingredients which 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.
- (x) The product in question is thus clearly a herbal oil, intended to cure dry skin, heal wounds, reduces chronic muscle pain and joint pain but also have anti- ageing and anti-wrinkling properties which is consequential to the predominant purpose.
- (xi) That the appellant has cited the judgment passed in the matter of G.D. PHARMACEUTICALS LTD versus Union of India 1992 (60) E.L.T. 205 (Cal.) [12-02-1992] which held that "*... it prima facie appears that Boroline contains certain medicines. Boroline is, therefore a drug.*"
- (xii) That the WBAAR in the matter of common parlance test, has only referred to the product description as available on some online platforms but in some other online platforms the product has been categorized under "Homeopathy" or "Buy Medicine".
- (xiii) That the WBAAR has wrongly interpreted the judgments as referred in the order to determine the primary use of the product, as the ingredients used in the product, for example - Harindra, Nanjistha, Arjuna, Neem Oil etc. are used to cure the allergies, wounds, skin damage, skin infections, irritation.
- (xiv) That the appellant further relied on the in the judgement passed by the Hon'ble Supreme Court of India in the matter of M/S. DENIS CHES LAB LTD. & ANR. Versus COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD II [CIVIL APPEAL NOs. 6024-6028 OF 2009].

- (xv) the product is not a cosmetic but a medicament and WBAAR has erred in its judgment by classifying the product under HSN 3304.
- (xvi) That the appellant prayed for submitting of additional judgements at the time of hearing, which the appellant has also relied.

10. **Personal Hearing:**

During the course of hearings, the Appellant's authorised representative reiterated the points as stated in the Appeal, emphasising the subsequent points:

- (i) that the intended manufactured product, Jac Olivol Body Oil, is an ayurvedic patent and proprietary medication, as explicitly stated on its label, and is further protected by trademarks and copyrights;
- (ii) 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;
- (iii) that the aforementioned product is being used as a proprietary medicine protected by an ayurvedic patent, and all constituents employed in its production are specified in authoritative Ayurvedic textbooks (Bhavprakash) and the Ayurvedic pharmacopoeia;
- (iv) that the Drug Controller has granted approval for the product;
- (v) that the oil is formulated using an assortment of ayurvedic herbs, which are specified in various volumes of The Ayurvedic Pharmacopoeia of India, published by the Government of India;
- (vi) that the product possesses significant curative or preventive value. Its primary manufacturing objective is to address muscle and joint aches and pains, disease control, and prevention. However, consumers also use it as a pain relief oil and for the treatment, mitigation, cure, or prevention of skin ailments.

(vii) that as per the prevailing rate structure, the best classification of the product has to be done under HSN 3004 thereby attracting tax @ 12%.

10.1 The appellant also had made Additional Submissions before this authority, inter alia submitting the following:

(i) The ingredients of the instant products were clearly depicted during obtaining the Drug licence issued in accordance with the decision of drug controller and a committee of, deputy drug controller.

(ii) This committee ensured that the ingredients were combined in accordance with the principles of AYUSH (the Indian system of medicine at the time). Only those ingredients that were listed in classical texts and approved in schedule I of the Drugs and Cosmetics Act 1940 (or, in modern parlance, Ayurvedic pharmacology) were used.

(iii) The applicant's submission further provided a comprehensive discussion on the Ayurvedic Pharmacopoeia of India (API), including its developments, significance, and also the medical substances listed therein, to substantiate its authenticity and relevance.

(iv) The appellant has also provided the extract of the Ayurvedic Pharmacopoeia detailing the components of its product.

11. The issue to decide upon in the instant appeal is whether the product intended to be manufactured & sold by the appellant i.e. JAC OLIVOL OIL shall fall under HSN No. 3004 or under HSN 3304 of the GST Tariff.

12. **As per Mr. Navneet Goel, Member**

12.1 No submission on behalf of the Revenue is available in this case.

12.2 The submissions and materials on record placed before the Appellate Authority have been carefully considered.

12.3 It is noted that:

(i) Section 3(a) of the Drugs and Cosmetic Acts of 1940 provides the following definition:

“Ayurvedic, Siddha or Unani drug” includes all medicines intended for internal or external use for or in the diagnosis, treatment or prevention of

diseases or disorder in human beings or animals and manufactured exclusively in accordance with the formulae described in the authoritative books of Ayurvedic, Siddha or Unani Tibb systems of medicine, specified in the First Schedule.

(ii) Section 3(h) of the Act defines 'patent or proprietary medicine' as:

“In relation to Ayurvedic, Siddha or Unani Tibb systems of medicine all formulations containing only such ingredients mentioned in the formulae described in the authoritative 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 parental route and also a formulation included in the authoritative books as specified in Clause (a) ...”

12.4 The Ayurvedic Pharmacopoeia of India, Part I Vol. I and Part I Vol. II, which were attached to the additional submission by the appellant have been acknowledged. These publications were published by the Department of Ayush, Ministry of Health and Family Welfare, Government of India. From the soft copies, it appears that several ingredients present in the instant product, including Haridra, Manjistha, Arjuna, Daruharidra, Karpoor, Neem Oil, and others, are included in the Ayurvedic Pharmacopoeia of India.

12.5 It is noted that the 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.

12.6 The dictionary defines "therapeutic" as a treatment intended to enhance an individual's health or treat an illness, rather than preventing it. Conversely, "prophylactic" is defined in the dictionary as "something intended to prevent diseases."

12.7 It has been further noted that there are numerous rulings concerning the subject of the present appeal, both in support of and against the

appellant. A number of these decisions have been referred by both WBAAR and the appellant in support of their respective arguments.

12.8 The judgements in favour of the appellant are as under:

- (i) **The Commissioner Commercial Tax Uttarakhand Vs Perfetti Van Melle India Pvt Ltd:** In the said Order it was held that only for the reasons these items (Chlormint, Happydent) 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.
- (ii) **M/s. Denis Chem Lab Ltd. & Anr. Vs Commissioner of Central Excise, Ahmedabad II:** holding that “A reading of the license issued to the Assessee, makes it apparent that the composition of the product predominantly consists of Glucose (sugar) and electrolyte (minerals) which are essentially for the purpose of replenishment, not necessarily only used at the time of treatment for any particular disease but also as a preventive measure. Mere addition of Boric Acid and Chlorocresol, that too in minimal proportion, would not alter the character of the product. The product retains its essential purpose of replenishment; and not partake the character of a medicine used only for the treatment of any particular disease.”
- (iii) **Commissioner of Central Excise, Mumbai IV Vs Ciens Laboratories (2013) 14 SCC 133:** In this judicial decision, the Honourable Court established the subsequent principles to ascertain the classification of a product as medicament or cosmetic:
 - (i) *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.*
 - (ii) *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 the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments.*
- (iv) **The Commissioner of Customs, Central Excise and Service Tax, Hyderabad Versus Ashwani Homeo Pharmacy [Civil appeal No. 9525 of 2018 dated 03.05.2023]:** Stipulating that “*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...”\.

- (v) **G.D. PHARMACEUTICALS LTD versus Union of India 1992 (60) E.L.T. 205 (Cal.) [12-02-1992]** which held that “... *it prima facie appears that Boroline contains certain medicines. Boroline is, therefore a drug.*”
- (vi) **CCE v. Wockhardt Life Sciences Limited (2012) 5 SCC 585:** wherein the Hon’ble Court has held that “... *In our view, as we have already stated, the combined factor that requires 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 user to which the product is put.*”
- (vii) **CCE v. Hindustan Lever Ltd., (2015) 10 SCC 742:** holding that “...*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*”.

12.9 The WBAAR on the other hand has kept reliance on the following judgements while passing their Ruling.

- (i) **Puma Ayurvedic Herbal (P) Ltd. vs. Commissioner, Central Excise, Nagpur 10** where the 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?"*

"...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."

(ii) **Alpine Industries vs Collector of Central Excise, New Delhi, (2003) 3 SCC 111** where 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:

"...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."

".....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 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.”

- (iii) **Commissioner of Customs, Central Excise and Service Tax, Hyderabad versus Ashwani Homeo Pharmacy (Civil appeal No. 9525 of 2018 dated 03.05.2023)**. This case has also been referred by the appellant in their support. The WBAAR has inter alia referenced the observation made by the Honourable Court in the aforementioned judgement, which states that "...even if a cosmetic has a secondary curative or prophylactic value, it would not be considered a medicament, as this Court held in *Alpine Industries (supra)*."
- (iv) **Ponds India Ltd. vs Commissioner of Trade Tax, U. P., Lucknow [2006] 147 STC 442 (AII)**, where 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.*

- (v) WBAAR has also referred the **Ciens Laboratories (supra)**, as in the said judgement the Hon'ble Apex Court has also formulated following guiding principles in addition to what has already been referred by the appellant:
"...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."

12.10 The judgements and arguments presented to the Appellate Authority have been examined and the followings are determined:

- (i) The WBAAR, in rendering its decision, has relied on the common parlance test as one of the twin tests to determine whether a product qualifies as a medicament or a cosmetic. WBAAR has considered this test to be widely recognised and used to determine whether a product falls under heading 3004 of the Customs Tariff Act, which pertains to medicaments.
- (ii) The WBAAR has also considered the two labels of the product as submitted by the appellant, one of which specifies the product as to be used for "healthy, radiant, and soft skin" without any mention of its medicinal application. However, the alternative label characterises the product's medicinal application as follows: *"...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."*
- (iii) It is observed that while the receipt of the second label through e-mail was acknowledged by WBAAR in the Order, the WBAAR did not take into account the medical application of the product, as specified on the second label, while rendering its decision.
- (iv) The WBAAR has additionally cited the observation made by the Honourable Apex Court in Puma Ayurvedic Herbal (P) Ltd (supra) to

the effect that *'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.'*

WBAAR has therefore concluded that the assertion that the product itself instructs users to "apply daily before or after bathing all over your body" contradicts the aforementioned court's ruling.

12.11 In the judgement passed by the Hon'ble Supreme Court in the case of Commr. Of Central Excise, Delhi vs M/S. Ishaan Research Lab. (P) Ltd.& Ors, the Apex Court has observed that:

"Our attention was also invited to various orders as also to the literature and it was tried to be suggested that these products were treated to be the cosmetic products, if not by the assessee, at least by the customers. We have already pointed out that the common parlance test is not "be all and end all" of the matter on the basis of which the case of Shri Baidyanath Ayurved Bhavan's case (supra) was decided. We have further pointed out that thereafter firstly the entry was amended and in series of decisions this Court has held that merely because the product could be put to cosmetic use that would not by itself make it a cosmetic product provided there was a rightful claim made that it was an Ayurvedic product on the factual basis, and it contained the medicinal Ayurvedic medicament. The miniscule percentage used is also not a deciding factor and this court has, in series of decisions, held that the miniscule percentage does not change the nature of the product from medicament to the cosmetic products."

In view of the aforementioned judgement, it is evident that the "Common parlance test" cannot be the exclusive criterion for classifying a product. Furthermore, it cannot be maintained that a product should be deemed cosmetic if there is rightful claim to believe that it is an Ayurvedic product containing medicinal Ayurvedic medicament, even in miniscule percentage.

12.12 The appellant's has submitted during the course of hearing, that Disprin tablets, which contain aspirin, are frequently dissolved in water prior to optimise the drug's effectiveness and facilitate a more rapid onset of action. Water serves as a medium in this instance to facilitate the absorption of the dissolved tablet into the body. Despite the extremely minute volumetric concentration of the drug in comparison to water, the medicinal properties of Disprin are still preserved in this water-and-disprin solution. This contention has been found to be agreeable while adjudging instant appeal.

12.13 It has been observed that WBAAR while passing its Ruling have never contradicted that the product JAC OLIVOL is made of the ingredients which has been used extensively in Ayurvedic medicine and have a variety of therapeutic properties. Additionally, we have considered the use of the twin tests of classification—(i) the Common Parlance test and (ii) the Ingredients test—to determine whether a product qualifies as a medicament under Chapter 30.

12.14 In this particular instance, the appellant accompanied their additional written submission with a certificate from the Directorate of ISM Drugs Control, Government of West Bengal, which granted approval for the drug formulation of "JAC OLIVOL" Herbal Body Oil. The certificate detailed the constituents of the product, including their respective quantities and names, and included Haridra, Manjistha, Arjuna, Daruharidra, Karpoor, Nimba Oil, Badam Oil, and Oilve Oil, among others. The assertion that all of these constituents possess medicinal properties has not been contested by WBAAR.

12.15 Therefore, it appears that the instant product satisfies the second criterion of the twin test that is "the Ingredients test".

12.16 Further in terms of the the judgement of the **Hon'ble Supreme Court in the case of Commr. Of Central Excise, Delhi vs M/S. Ishaan Research Lab. (P) Ltd.& Ors**, we find that "*the common parlance test is not "be all and end all" for deciding the deciding the classification of a product as medicament. We would also like to quote another relevant portion of the said judgement which observes that:*

"...that merely because the product could be put to cosmetic use that would not by itself make it a cosmetic product provided there was a rightful claim made that it was an Ayurvedic product on the factual basis, and it contained the medicinal Ayurvedic medicament. The miniscule percentage used is also not a deciding factor and this court has, in series of decisions, held that the miniscule percentage does not change the nature of the product from medicament to the cosmetic products."

12.17 In the judgement passed in the case of **Commissioner of Central Excise, Mumbai IV Vs Ciens Laboratories (2013) 14 SCC 133**, it is directed that:

(i) 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.

(ii) 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 the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments.

Therefore, how the instant product has been categorised by different online platform, becomes redundant while deciding its classification. Also,

12.18 The judgment in the case of **The Commissioner Commercial Tax Uttarakhand Vs Perfetti Van Melle India Pvt Ltd** holding that only for the reasons these items (Chlormint, Happydent) 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.

Based on this decision, it can be deduced that the perceived utility of a product does not necessarily serve as a determining factor in its classification.

12.19 WBAAR's classification of the product, which was predicated primarily on the Common Parlance test and neglected a number of previously discussed factors and cited decisions of the Honourable Courts, is therefore rejected.

13. In view of the above discussion, it is held that the product JAC OLIVOL BODY OIL intended to be manufactured & sold by the applicant would be covered under Heading 3004 of THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT and would be taxed accordingly under the GST Act.

14. **As per Mr. Devi Prasad Karanam, Member**

15. In the instant case, it is pertinent to refer to the relevant portion of the judgment passed by the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise vs. Baidynath Ayurved Bhawan Ltd, as already referred to in para 4.

16. Again, in Alpine Industries vs Collector Of Central Excise, New Delhi, [(2003) 3 SCC 111], the Hon'ble Supreme Court has observed:

Any subsidiary therapeutic or prophylactic use of the product would not change its nature as "Hair oil", if in the common parlance, it is treated as a cosmetic.

17. Thus, the entire issue whether the instant product is to be classified as a cosmetic or a medicine mainly rests on the twin tests as referred to in para 4.
18. The appellant has submitted soft copies of The Ayurvedic Pharmacopoeia of India, Part I Vol. I and Part I Vol. II published by Department of Ayush, Ministry of Health and Family Welfare, Government of India as annexures to his additional submission wherefrom it appears that various ingredients of the instant product i.e. Haridra, Manjistha, Arjuna, Daruharidra, Karpoor, Neem Oil etc. are covered under such Ayurvedic Pharmacopoeia of India as Ayurvedic ingredients.
19. Now, comes the first leg of the afore-stated 'twin test' i.e. whether in common parlance the item is accepted as a medicament?
20. Taking the example of Haridra or Turmeric – the same goods are used for therapeutic or prophylactic purposes but at the same time it is widely used all over the India as spice and condiment being one of the primary ingredients of cooking. Similarly, Karpoor or Camphor not only has its uses to treat skin conditions, improve respiratory function, and relieve pain but also as an insect repellent and moreover for the purposes of puja and aarti. So, here naturally the question comes, what is the identity of these goods in the minds of general people in common parlance? As for example, The Ayurvedic Pharmacopoeia of India, Part I Vol. I and Part I Vol. II as referred to by the appellant even has entries like Atasi or Linseed whose oil is primarily used in artists' oil paints, Dhanyaka or Corriander, Jatiphala or Nutmeg and Hingu or Asfoetida which are widely used in cooking, Aksoda or Walnut and Dadima or Pomegranate which are commonly savoured as fruit and nut, Iksu or Sugarcane which is mainly used for production of sugar all through the world.
21. The appellant while presenting his case before this Bench argued that in most part of our country, people have been applying mustard oil to keep the skin hydrated but that does not make mustard oil a cosmetic product.
22. In similar line, if it is asked whether in common parlance, whether applying mustard oil to keep the skin hydrated make it a medicine, it will land into an answer as per common parlance that mustard oil is primarily a cooking medium.
23. The appellatant has stated that the instant product can be used for treating minor burns and prevents blisters. Now, in light of 'common parlance', if we ask – what will be the requirement of someone in case of treating a minor

burn – an anti-burn ointment or the instant product, the answer would tend to the former option.

24. Now, the issue of therapeutic i.e. relating to the healing of disease or prophylactic i.e. intended to prevent disease of the product comes in question. Also, a valid question comes regarding the issue of cure vs. care. As submitted by the appellant, Jac Olivol Body Oil has certain skin care properties. It can be used in winter for curing dry skin and also has its use for curing body ache. Now, dry skin can occur normally due to loss of skin moisture in winter season or misuse of external agents like soap. At the same time it can occur due to skin diseases like atopic dermatitis (eczema) or psoriasis. Now, as we all know any body-oil like mustard oil, coconut oil or olive oil has a natural property to retain skin moisture resulting in minimization of dry skin. But that does not necessary imply that mustard oil, cocout oil or olive oil can cure skin diseases like eczema or psoriasis. In the same way, as claimed by the appellant, the product Jac Olivol Body Oil can be used to relieve body ache, joint & knee pains. It is a well accepted fact that a body massage using any body-oil like mustard oil, cocout oil or olive oil can give relief to body spasm and ache. But at the same time, pain and ache arising out of arthritis, tendinitis, gout, spondilitis etc demand specified medical treatment with medicines. Thus, there is a wide gap between the word 'cure' and 'care' so far as the instant product is concerned.
25. The same theory has been promulgated in the case of Commissssioner of Customs, Central Excise and Service Tax, Hyderabad versus Ashwani Homeo Pharmacy (Civil appeal No. 9525 of 2018 dated 03.05.2023), where the Hon'ble Supreme Court has observed:
- ... 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).[emphasis added]*
26. In view of above discussions, it can be opined that the product Jac Olivol Body Oil intended to be manufactured & sold by the applicant shall not be covered under Heading 3004 of the First Schedule to the Customs Tariff Act as appealed for. Instead, it would get covered under Heading 3304 of the First Schedule to the Customs Tariff Act and would be taxed accordingly under the GST Act.
27. The WBAAR Ruling No. 19/WBAAR/2023-24 dated 10.08.2023 is confirmed and the Appeal stands rejected.

28. As the members of the West Bengal Appellate Authority for Advance Ruling differ on the classification of the instant product i.e. 'JAC OILVOL BODY OIL', it is deemed that no Advance Ruling can be issued in respect of the questions under appeal as per the provisions of Section 101 sub-section (3) of the GST Act. Thus the Advance Ruling No. 19/WBAAR/2023-24 dated 10.08.2023 is deemed to be not in operation.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-

(Devi Prasad Karanam)
Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-

(Navneet Goel)
Member, West Bengal Appellate
Authority for Advance Ruling