

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

PRINCIPAL BENCH,  
COURT NO. I

**EXCISE APPEAL NO. 50578 OF 2017**

[Arising out of the Order-in-Original No. 56-57/COMMJR/DDN/2016 dated 29/12/2016 passed by Commissioner, Customs, Central Excise & Service Tax, Dehradun.]

**M/s Shahnaz Ayurvedics (Dehradoon),** .....Appellant  
Vikas Nagar, Dehradun,  
(Uttarakhand).

**Versus**

**Commissioner, Central Excise** ....Respondent  
**Commissionerate, Dehradun,**  
E-Block, Nehru Colony Dehradun,  
Uttarakhand.

**AND**

**EXCISE APPEAL NO. 51016 OF 2025**

[Arising out of the Order-in-Appeal No. DDN/EXCUS/000/APPL/147/2024-25 dated 30/01/2025 passed by Commissioner, Customs, Central Excise & Service Tax, Dehradun.]

**M/s Shahnaz Ayurvedics (Dehradoon),** .....Appellant  
Vikas Nagar, Dehradun,  
(Uttarakhand).

**Versus**

**Commissioner, Central Excise** ....Respondent  
**Commissionerate, Dehradun,**  
E-Block, Nehru Colony Dehradun,  
Uttarakhand.

**APPEARANCE:**

Shri Vivek Kohli, Senior Advocate and Shri Ashwani Sharma,  
Advocates for the appellant.

Shri Din Dayal Mangal, Authorized Representative for the  
Department

**CORAM:**

**HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50346-50347/2026**

**DATE OF HEARING : 17.12.2025**  
**DATE OF DECISION: 13.03.2026**

**P.V. SUBBA RAO**

**M/s Shahnaz Ayurvedics<sup>1</sup>** filed these two appeals to assail the following orders passed by the Commissioner and Commissioner (Appeals).

|              |  |  |
|--------------|--|--|
| E/50578/2017 | 2014-2016<br>SCN dated 4.8.2015<br>(25.7.2014 to 30.4.2015)<br>SCN dated 9.5.2016 (1.5.2015<br>to 29.2.2016) | OIO dated 29.12.2016 passed<br>by the Commissioner of<br>Central Excise, Dehradun  |
| E/51016/2025 | 2016-2017<br>SCN dated 3.8.2017 (1.3.2016<br>to 31.1.2017)   | OIA dated 30.1.2025 passed<br>by Commissioner (Appeals)<br>upholding OIO dated<br>31.10.2023 passed by the<br>Joint Commissioner |

2. The short question to be answered in both these appeals is whether the following 18 goods manufactured by the appellant are Patent and Proprietary Ayurvedic<sup>2</sup> preparations as asserted by the appellant or cosmetics as held in the impugned orders.

- (i) Shabase
- (ii) Shanaz Forever Root Marrow Base
- (iii) Shanaz Forever Vegetable Exfoliating Dermabrasive powder
- (iv) Shanaz Forever Thermal Mini Face Lift
- (v) Shagrain
- (vi) Shapeel
- (vii) Sharose
- (viii) Shalmond
- (ix) Shawwhite
- (x) Shamoon
- (xi) Shaface Plus
- (xii) Shatreat Plus
- (xiii) Flower Power Shatreat
- (xiv) Vegpeel
- (xv) Flower Power Vegpeel
- (xvi) Shacomplex
- (xvii) Shamarrow
- (xviii) Shapack Mix

- 
1. appellant
  2. P&P

3. Consequently, the questions to be answered are whether the demand of duty and penalty can be sustained or not.

**Submissions on behalf of the appellant**

4. Learned counsel for the appellant made the following submissions:

- (i) The department wrongly classified the goods which are ayurvedic medicaments (classifiable under Chapter 30) as cosmetics and soap under chapter 33 & 34 of the Central Excise Tariff.
- (ii) The controversy had initially arisen in 1987 with respect to the appellant's manufacturing unit in Delhi and an SCN dated 7.3.1988 was issued which was decided by the Additional Commissioner by order-in-original dated 29.8.1989 in favour of the appellant. He had also allowed the exemption available to P&P Ayurvedic medicines.
- (iii) Later, on 28.2.1994, the exemption available to P&P Ayurvedic medicines was withdrawn and therefore, the appellant had filed a classification list under Rule 173B of the erstwhile Central Excise Rules, 1944 for its units in Delhi and NOIDA classifying them as P&P medicines (during the relevant time, a manufacturer had to file classification lists giving the products which he intended to manufacture and their classification to the Assistant Commissioner for approval). The classification lists were approved by the Assistant Commissioner, Delhi on 29.9.1994 and Assistant Commissioner, NOIDA on 2.12.1994.
- (iv) Thereafter, the classification dispute was again raised by the Department in 1996 and the appellant filed a Writ Petition in Allahabad High Court and by order

dated 29.1.2004 the High Court decided the matter in favour of the appellant which order was subsequently upheld by the Supreme Court.

- (v) These appeals pertain to the appellants' unit in Dehradun which was started on 1.6.2004 and the appellant was registered on 17.6.2004 with the central excise department for manufacture of P&P medicines and cosmetics. For the first ten years, there was no dispute because all goods manufactured by the unit were any way exempted by area-based exemption Notification No. 50/2003-CE dated 10.6.2003 which ended on 16.7.2014.
- (vi) The appellant informed the Range officer on 8.9.2014 regarding classification of its finished products and on 19.11.2014, the Range officer instructed the appellant to clear the disputed goods as cosmetics and pay duty.
- (vii) After completing the investigation, two show cause notices<sup>3</sup> dated 4.8.2015 and 9.5.2016 were issued which were decided by the Commissioner by order dated 29.12.2016 impugned in Excise Appeal No. 50578 of 2017.
- (viii) A follow up SCN was issued on 3.8.2017 which was decided by the Joint Commissioner by order dated 31.10.2023 which was upheld by the Commissioner (Appeals) by order dated 30.1.2025 which is impugned in Excise Appeal No. 51016 of 2025.
- (ix) All the disputed goods manufactured by the appellant were P&P Ayurvedic Medicines. The active ingredients of these goods are prescribed in Authoritative Ayurvedic Texts. Other than the active ingredients, these products only contain only permitted

preservatives, stabilizers, excipients/base material & stabilizers like starch, lactose and filling agents like sodium lauryl sulphate, liquid paraffin, etc.

- (x) The primary function of these products is to cure a particular medical condition recognized as ailment/disease in Ayurveda and also in Allopathy. The medicinal properties of the products are mentioned on their labels.
- (xi) The Commissioner rejected the technical study report submitted by the appellant but failed to bring any test report to establish that the products have no medicinal characteristics.
- (xii) Even in trade parlance, these were known as ayurvedic medicines.
- (xiii) Even if the classification is decided against the appellant, it is only a matter of difference of opinion regarding the classification of the goods and no penalty can be imposed on the appellant.
- (xiv) The impugned order may be set aside and the appeal may be allowed with consequential relief.

### **Submissions on behalf of the Revenue**

5. Learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) During the first ten years after commencing manufacture, the appellant had not paid any duty as it was exempted by area based exemption Notification No. 50/2003-CE dated 10.6.2003 and this exemption ended on 24.7.2014 and the appellant was liable to pay duty from 25.7.014 onwards.

- (ii) The appellant is engaged in manufacture of ayurvedic medicines falling under Chapter 30 and cosmetics falling under chapter 33 of the Central Excise Tariff.
- (iii) The dispute is whether the products in dispute were cosmetics or ayurvedic products. These included products such as medicated soap. These products contained several chemical/non-ayurvedic ingredients also and they were essentially cosmetics but the appellant claims them to be Ayurvedic preparations.
- (iv) The products in dispute were not ayurvedic medicaments but were cosmetics meant for beautification and personal care (skin creams, lotions, shampoos and oils) and were sold and marketed for enhancing appearance and personal grooming and not for treatment or prevention of any disease. They were correctly classified in the impugned order under Central Excise Tariff Headings **3304 and 3305** and they were not, as claimed by the appellants medicaments falling under **3004 90 11**.
- (v) The products had no proven therapeutic or prophylactic use to satisfy the criteria for classification as 'medicaments'. The labels indicated that the products were sold emphasizing their cosmetic benefits such as fairness, anti-wrinkle effects, skin glow, etc.
- (vi) The mere fact that the appellant had a licence under the Indian System of Medicines (ISM) does not qualify a product to be classified as a medicament when they are being sold as emphasizing their cosmetic properties. The presence of Ayurvedic ingredients in the cosmetics do not turn them into medicaments.
- (vii) As per Chapter note 1(d) of Chapter 30 of the Central Excise Tariff, cosmetics and toilet preparations are

excluded even if they contain some pharmaceutical substances.

(viii) Trade parlance, consumer perception and market positioning of the disputed products all show that they are cosmetics with some ayurvedic ingredients; they were packed, marketed and priced as premium personal care or beauty products with no reference to diseases.

(ix) In view of the above, the impugned order is correct and proper which may be upheld and the appeal may be dismissed.

### **Findings**

6. We have considered the submissions advanced by both sides and perused the records.

7. We have also carefully gone through the detailed table submitted by the learned counsel giving the active ingredients of each of the products in dispute, the specific properties of each active ingredient, the authoritative text in which the ingredient is mentioned and the text of the authoritative book. The table also indicates the manufacturing licence for each product obtained under the Indian System of Medicine (ISM). None of these have been disputed by the learned authorized representative of the Revenue. We, therefore, conclude that the products were manufactured from the ingredients mentioned in the table and were manufactured under a licence under the ISM.

8. The reasons given in the impugned order of the Commissioner of CGST, Dehradun to hold that the goods in dispute were cosmetics is as follows:

- (i) Although the appellant claimed the goods were Patent and Proprietary Ayurvedic medicines, they also have a number of chemicals/ ingredients which are not mentioned in the ayurvedic texts.
- (ii) As per section 2(h) read with 2(a) of the Drugs and Cosmetics Act, 1945, a product manufactured by using an ingredient that is foreign to the formulae given in the ayurvedic texts would not constitute a PP Ayurvedic medicine.
- (iii) Nearly all the excipients used by the appellant have usage in both pharmaceutical and cosmetics industry.
- (iv) For products to be classified under **Central Excise Tariff Item 3004 90 11**, they must be Ayurvedic medicines and they can be either classical medicines or PP Ayurvedic medicines. The disputed products cannot be covered as medicines because of usage of chemicals in them.
- (v) Perusal of the invoices issued by the appellant showed that these goods were sold in beauty parlours and to general retailers. Therefore, they are not sold as Ayurvedic PP medicines in the market.
- (vi) Note 1(d) to Chapter 30 excludes 'preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties from Chapter 30.
- (vii) Four of the products were soaps which are medicated and they deserve to be classified as soap under Chapter 34 of the tariff in view of chapter note 1(f) to chapter 30 and Chapter note 1(b) to chapter 33 of the tariff.

9. In the impugned order, the Commissioner examined sections 2(a) and 2(h) of the Drugs and Cosmetics Act, 1945 {correct sections are 3 (a) and 3 (h)} and interpreted that these imply any products which contain any ingredient other than those mentioned in the Ayurvedic texts do not qualify as PP medicines. Since the products also contain many more other ingredients, he concluded that they do not qualify as PP medicines. We find that sections 3(a) and 3(h) read as follows:

**Section 3: Definitions.** —In this Act, **unless there is anything repugnant in the subject or context,** —

(a) “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 system of medicine, specified in the First Schedule;

(h) “patent or proprietary medicine” means, —

(i) **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 Ayurvedic, Siddha or Unani Tibb systems of medicine specified in the First Schedule, but does not include a medicine which is administered by parenteral route and also a formulation included in the authoritative books as specified in clause (a);**

(ii) in relation to any other systems of medicine, a drug which is a remedy or prescription presented in a form ready for internal or external administration of human beings or animals and which is not included in the edition of the Indian Pharmacopoeia for the time being or any other Pharmacopoeia authorised in this behalf by the Central Government after consultation with the Drugs Technical Advisory Board constituted under section 5;

10. Since the products also contain excipients, the Commissioner reasoned that the goods do not qualify to be called Ayurvedic PP medicines. The case of the appellant is that these are fillers and excipients and are permitted to be used. We find that in any pharmaceutical preparation, there are fillers and excipients which provide the bulk to the product. If the expression only such ingredients in section 2(h) (i) is read to mean that it cannot have any other non-active ingredient also, it will result in absurd conclusions. For instance, many Ayurvedic tablets and capsules and syrups manufactured by companies are sold as such in the market. These contain, evidently, not only the active ingredients but also other materials required to make them into the formulation. Such excipients are not confined to Ayurvedic formulations; they are also used in all other formulations. For instance, if one takes a 500 mg tablet of Paracetamol and weighs it in a balance, it will weigh 1 or 2 grams of which only 500 mg will be the active ingredient - paracetamol. The rest will be talc, binders, etc. So an overwhelming portion of the tablet by weight will be say, talc. However, the tablet cannot be classified as talc because it is the largest component by weight. What gives the tablet its essential character is the 500 mg of paracetamol and hence it should be classified as such. Similarly, the overwhelming portion of any injection will be distilled water and overwhelming portion of any ointment will be petroleum jelly or Vaseline but these do not give them

their essential character. So, injections are not classified as water or ointments as petroleum jelly. Even according to the Commissioner, the excipients used by the appellant have use both in pharmaceutical preparations and in cosmetics. The mere fact that there are also excipients in them does not take the disputed goods out of the purview of Ayurvedic PP medicines. It also needs to be noted that the appellant had obtained a licence under the Indian System of Medicine to manufacture them.

11. The next finding of the Commissioner is that Note 1(d) to Chapter 30 excludes 'preparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties from Chapter 30. The scope of this note was examined by the Supreme Court in **Puma Ayurvedic Herbal (P) Ltd.** versus **Commissioner of C.Ex. Nagpur**<sup>4</sup> the relevant portion of which reads as follows:

**23.** The learned counsel for the respondent drew our attention to Note 2 of Chapter 33 of the Central Excise Tariff which is as under :

**"Note 2.** Heading Nos. 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value."

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**2. 2006 (196) E.L.T. 3 (S.C.)**

**24.** On the basis of this Note it was argued that even if a product had some curative or prophylactic value, it will still be cosmetic. We cannot accept this argument. The learned counsel has overlooked the use of the word 'subsidiary' in the said note from which it follows that a subsidiary curative or prophylactic use will not convert a cosmetic into medicament. We have tried to illustrate this by giving the example of bald man treating his baldness by use of Ayurvedic product. The curative use of the product is primary in that example and not subsidiary. The subsidiary result is improvement in appearance. Therefore, in our view, Note 2 to Chapter 33 does not help the respondent. Rather Note 5 to the said Chapter, makes it clear that the products which fall under Heading 33.04 are primarily beauty or make up preparations. They may incidentally help in protection against skin irritants. They may also help as a skin tonic, yet they are cosmetics because skin protection is subsidiary benefit.

**25.** In this connection reference may also be made to Note 1(d) to Chapter 30 of the Central Excise Tariff. The said Note reads as under :

Note 1 starts with "This Chapter does not cover".

(a) .....

(b) .....

(c) .....

(d) **"Preparations of Chapter 33 even if they have therapeutic or prophylactic properties."**

**26.** Thus preparations falling in Chapter 33 even if they have therapeutic or prophylactic properties will not fall under Chapter 30 which deals with pharmaceutical products. The reasons for this appears to be that even cosmetics may have something to improve skin or other parts of the body where they are used. In that sense they may have some therapeutic value yet they remain cosmetic.

**27.** From the above discussion it is clear to us that the Revenue has failed to make out any case in support of its stand that all the products in question fall under Chapter 33 i.e. under Heading Note 33.04.

12. Therefore, what needs to be seen is how the disputed goods are being marketed and sold. The labels of the disputed goods leave no manner of doubt that they are being sold as PP

Ayurvedic medicines specifically indicating the ailments or conditions which each of them claim to treat or improve. The detailed chart produced by the learned counsel before us, further gives the details of each active ingredient, its pharmaceutical property and in which authentic text that ingredient has been mentioned. He also produced copies of the relevant texts. Such being the case, we find no reason to hold that the disputed goods are not Ayurvedic PP medicines.

13. Consequently, the classification of the disputed products as cosmetics in the impugned order cannot be sustained. Consequently, the demand of duty and interest and imposition of penalties also cannot be sustained.

14. Both the appeals are allowed and the orders impugned therein are set aside with consequential relief to the appellant.

(Order pronounced in open court on 13/03/2026.)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(P.V. SUBBA RAO)  
MEMBER (TECHNICAL)**