IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 13.07.2026	Delivered On: 24.07.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA

T.C.(R). No.48 of 2016
& C.M.P.No.16344 of 2016

M/s.Vestige Marketing Private Limited,
No.1/C, First Floor, Othavadai Street,
Orleanpet,
Puducherry – 605 005. … Petitioner

vs.

The Union Territory of Puducherry,
Rep. By its Commissioner of Commerical Tax,
Puducherry. … Respondent

Prayer: Tax Case Revision has been filed under Section 51(2) r/w Rule 40(1)(a) of the Puducherry Value Added Tax Act, to revise the order of the Sales Tax Appellate Tribunal, Puducherry, dated 17.03.2016 passed in T.A.No.16 of 2015.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.J. Kumaran,
Additional Government Pleader
(Puducherry)

ORDER

(Order of this Court made by Dr. G. Jayachandran, J.)

The Tax Case (Revision), filed under Section 51(2) read with Rule 40(1)(a) of the Puducherry Value Added Tax Act, is by the trader, on being aggrieved by the levy of tax at 14.5% for the goods sold by it as sale of food supplements, instead of 5% tax as "proprietary Ayurevedic Medicines."

2. The goods for which the petitioner claims 5% tax under the classification of "medicines" are as follows:-

(i) Vestige Spirulina Capsules.

(ii) Vestige Noni Capsules.

(iii)Vestige Ganoderma Capsules.

(iv) Vestige Amla Capsules.

(v) Vestige Aloe Vera Capsules.

(The above five products are manufactured by M/s.Cosmic Nutracos Solution (P) Ltd., Himachal Pradesh, with valid license issued by the State of Himachal Pradesh.)

(vi) Vestige Neem Oil.

(vii) Vestige Flax Capsules.

(These two products are manufactured by M/s.Softech Pharma (P) Ltd Daman with valid license issued by Union Territory of Daman and Diu.)

3. The petitioner is a "registered trader" in Puducherry, holding distinct TIN No:34510017303 issued by the Government of Puducherry under the Puducherry Value Added Tax Act, 2007 and is also a "registered dealer" under the Central Sales Tax Act, 1956, for the business wholly/mainly/partly for redistribution of goods such as food supplements, printed materials, CDs, cosmetics, soaps and shampoos in the course of inter-state trade.

4. For the inter-state purchase of the goods mentioned above, the petitioner has declared it as food supplements for the purpose of the CST Act and while filing the returns for sales, had claimed those products should be treated as medicines and to be taxed only at 5% and not at 14.5%. The Commercial Tax Officer, who assessed the returns on scrutiny of Form CC filed by the petitioner, held that the claim of the petitioner to treat those goods as medicines is unacceptable. They have to be classified as "Food supplements" and to be levied 14.5% tax for it falls under the residuary item. Accordingly, tax was levied. The order of the Assessing Officer was confirmed by the Appellate Authority as well as by the Tribunal.

5. Challenging the order of the Appellate Authority, the present revision petition has been filed by the trader. The treatment of the said goods as a residuary item for imposing 14.5% tax, instead of treating it as medicines with 5% tax liability is the bone of contention in this revision petition.

6. The following substantial questions of law raised by the revision petitioner in its grounds of revision:-

> *1. Whether the Appellate Tribunal is empowered to dismiss the appeal with costs?*
>
> *2. Whether the Appellate Tribunal misdirected itself and thereby fell into an error in concluding that the petitioner failed to produce the records before the authorities below including itself when petitioner produced copies of product testimonials and the distributors from (Annexures containing 93 pages) along with written submissions?*
>
> *3. Whether the Tribunal ignored the law that the necessity to obtain the Drug Licence from Puducherry does not arise in the case of "Ayurvedic Drugs"? (Section 33 A Chapter IV, since form 20, 20-A, 20-B, as per Rule 61 of Drug and Cosmetic Rules does not apply for stocking and selling Aurvedic drugs)*
>
> *4. Whether the Tribunal committed an error in affirming the classification of goods marketed by the petitioner under the residuary item when there is specific*

entry 46/Part A of First Schedule under the Act for drugs?

5. Whether the Appellate Tribunal was correct in presuming that the "drugs" sold by the petitioner are "food supplements", since "food supplements" are only substitute for the food of common man?

6. Whether the Tribunal was correct in ignoring the decisions of this Hon'ble Court and the Apex Court cited before it while interpreting the classification of "Ayurvedic drug"?

Q1:*Whether the Appellate Tribunal is empowered to dismiss the appeal with costs?*

Chapter-VI of the Puducherry Value Added Tax deals about appeal and revision. Section 44(1) provides, the Government shall appoint a Judicial Officer who is otherwise qualified to be appointed as a District and Sessions Judge to be the Appellate Tribunal and entrust the duties of the Appellate Tribunal to him. Nowhere under Chapter VI, or elsewhere in the Act, there is a bar for imposing costs. If the Tribunal is of the opinion that successful litigant must be compensated for the vexatious litigation the looser will have to bear the expenses. In this case, the said discretion of the Tribunal to impose costs is not fettered by any law. We find the power of the Tribunal to impose litigation expenses as costs is inbuilt. Therefore, the dismissal of the appeal filed by the assessee with costs is legally permissible and we find no excessive exercise of jurisdiction by the Tribunal. Accordingly, the first substantial question of law is answered in negative.

> ***Q2. Whether the Appellate Tribunal misdirected itself and thereby fell into an error in concluding that the petitioner failed to produce the records before the authorities below including itself when petitioner produced copies of product testimonials and the distributors from (Annexures containing 93 pages) along with written submissions?***

The assessee has obtained registration under the CST Act to trade in six specific products, in other words for purchase of those products mentioned in the registration certificate alone, the concession for inter-state sales will be applicable. Admittedly, in this case, the items now claimed to be declared as medicines were not purchased by the assessee declaring them as medicines, but as food supplements, which alone the assessee was permitted to purchase from other State. While so, the assessee after purchasing the goods from other States as food supplements by taking advantage of its registration under CST while selling the products wants to take advantages of lesser tax by claiming those products are Ayurvedic medicines. Since, the assessee has no license to trade drugs or medicines and the products which the assessee claimed as medicines has no therapeutic quality, the Department as well as the Tribunal have consistently found that the said products claimed as 'food supplements' while purchase, cannot become medicines while selling.

The documents produced by the assessee vouchsafe the facts that these products were manufactured by drug license holders. This fact alone is not sufficient to classify the goods as medicines or proprietary Ayurvedic Medicines. Since the ingredient of the product matters and not the producer. In cases of this nature, Courts normally apply the twin tests, namely, the "Common Parlance Test" and the "Authoritative Test". Though the assessee wants to presume the products as proprietary Ayurvedic Medicines by applying the common Parlance test, the assessee himself has authoritatively claimed these products as food supplements while purchasing from other States and also submitted the returns claiming it as food supplements. However, for the purposes of tariff alone, he turns around and claims it as drugs / medicines. If the products are drugs or medicines the dealer of the products, ought to have obtained license under the Drugs and Cosmetic Act, as well as the CST registration to deal must have covered 'Drugs/Medicine'. In the instant case, the Revision Petitioner hold CST registration to deal with only six products, which includes food supplements but not drugs. The CST Registration to trade inter-state only in the products mentioned in the certificate and if they are not food products, this fact stares at the assessee how he can account for the inter-state purchases. Therefore, the substantial question of law is answered in negative.

Q3. Whether the Tribunal ignored the law that the necessity to obtain the Drug Licence from Puducherry does not arise in the case of "Ayurvedic Drugs"? (Section 33 A Chapter IV-A, since form 20, 20-A, 20-B, as per Rule 61 of Drug and Cosmetic Rules does not apply for stocking and selling Aurvedic drugs)

The contention of the Revision Petitioner that, as per Section 33A of the Drugs and Cosmetic Act, there is no necessity to obtain a license for the sale of proprietary Ayurvedic medicines is incorrect to the extent that Section 33A of the Drugs and Cosmetic Act, 1940, only provides for the non-applicability of Chapter-VI in respect of Ayurvedic, Siddha or Unani drugs, since Chapter IV-A extensively deals with provisions relating to Ayurvedic, Siddha or Unani drugs. Section 33-EEC of the Drugs and Cosmetic Act, deals with Prohibition of manufacture and sale of certain Ayurvedic, Siddha and Unani Drugs and Section 33-I provides Penalty for manufacture, sale etc., of Ayurvedic, Siddha or Unani drug in contravention of Chapter IV-A. Therefore, the plea of the assessee in this regard is unsustainable. Therefore, answered against the revision petitioner.

> ***Q4. Whether the Tribunal committed an error in affirming the classification of goods marketed by the petitioner under the residuary item when there is specific entry 46/Part A of the First Schedule under the Act for drugs?***

The assessee had purchased the above mentioned products declaring it as 'food supplements' from manufacturers located outside Puducherry and sold them as food supplements. However, for the purpose of tariff has taken a plea that those products are proprietary Ayurvedic Medicines. Since no evidence to substantiate the said claim by placing certificate to deal medicines/drug inter-state or license to sell Drug/Medicine, it has been rightly held that the products purchased and sold as food supplements cannot for the purpose of tax tariff alone become 'medicines or drugs.'

We find no error in the findings of the Tribunal that the drug license obtained by manufacturer is not sufficient but license by the assessee to sell drugs which is covered under the Drug and Cosmetics Act, 1940, is mandatory. In the absence of such license, the assessee cannot claim those products as medicines or drugs.

We are of the firm view that a product purchased and sold as it is, without any change, shall carry the same character as it was purchased. The case of the assessee who wants to change the character of the commodities purchased as food supplements sold as such without undergoing any change is not permissible. In the absence of proof that the products intended to diagnostic, treat or cure any disease those materials do not form part in any of the items mentioned in the Schedule – IV, Part-A. Hence, they were treated as residuary goods under Part – A of Schedule – IV. The said treatment is upheld.

Accordingly, these substantial question of law is answered in negative.

Q5. Whether the Appellate Tribunal was correct in presuming that the "drugs" sold by the petitioner are "food supplements," since food supplements are only substitutes for the food of the common man?

The character of a product claimed to be "Ayurvedic Medicines" is determined by applying the Courts twin test, namely, the Common Parlance test and the Authoritative test. The Common Parlance test is not one-all and end-all.

Some more test is required to determine whether the product falls within the definition of 'Drug.' The definition of 'Drug' includes all medicines for internal and external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects. Therefore, the products first should satisfy that it is useful for treatment of disease and marketed as drugs in compliance with the provisions of Drugs and Cosmetic Act. In the absence of satisfying these requirements, the assessee cannot claim the products purchased as food supplements but sold to the customers as medicines. Hence, we answer the above substantial question of law against the assessee.

7. Accordingly, this Tax Case stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(**Dr. G.JAYACHANDRAN, J.**) & (**N. MALA, J.**)
24-07-2026

Index :Yes.
Neutral Citation :Yes/No.
bsm

To,

1. The Commissioner of Commerical Tax,
Union Territory of Puducherry,
Puducherry.

2. The Sales Tax Appellate Tribunal, Puducherry.

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&
N. MALA, J.
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