Court No. - 7

Case :- WRIT TAX No. - 1308 of 2019

Petitioner :- M/S Dabur India Ltd.
Respondent :- Commissioner Of Cgst, Ghaziabad and 4 Others
Counsel for Petitioner :- Atul Gupta, Abhishek Kumar Tripathi
Counsel for Respondent :- A.S.G.I.,Ashok Singh

Hon'ble Biswanath Somadder,J.
Hon'ble Ajay Bhanot,J.

[Per: Hon'ble Ajay Bhanot, J.]

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, being aggrieved by the order dated 19.08.2019 passed by the Appellate Authority for Advance Ruling for Goods and Services Tax, Uttar Pradesh. The order assailed in the writ petition dated 19.08.2019 has been passed under Section 101 of the Central Goods and Services Tax Act, 2017 and Uttar Pradesh Goods and Services Tax Act, 2017.

2. By means of the impugned order dated 19.08.2019, in the instant writ petition, the Appellate Authority has upheld the ruling of the Authority for Advance Ruling classifying odomos (product in issue), under HSN 38089191 of Chapter 38 of the Customs Tariff Act, 1975. The petitioner has also prayed that a writ in the nature of mandamus to be issued for classification of the product odomos as medicine under heading no. 3004 of the Customs Tariff Act, 1975.

3. Sri Atul Gupta, learned advocate for the petitioner contends that the product in question odomos is a

medicament and has been incorrectly classified as a mosquito repellent. The Appellate Authority misdirected itself in law by overlooking the fact that the product odomos has all characteristics of a medicine and is used as such. He further submits that the chemical composition of the product in question also establishes that the essential character of the product is that of a medicine.

4. Learned advocate for the Revenue on the other hand submits that the product was correctly classified under the appropriate entry / heading by the Authority for Advance Ruling as well as the Appellate Authority under the Act. Learned advocate for the Revenue also pointed out the process of reasoning adopted by the authorities below and the material in the record, to contend that there was no flaw in the decision making process.

5. Heard the learned advocate for the parties.

6. The controversy will be decided by us in the following sequence. The salient findings of the impugned order passed by the Appellate Authority shall be followed by a summarisation of the nature and scope of an enquiry to determine the classification of products under fiscal statutes. The authorities in point shall be detailed thereafter. The narrative shall be taken forward by consideration of the decision making process and the nature of findings by the authority below within limits of judicial review. Finally, the correctness of the order shall be seen in light of such discussion.

7. A perusal of the impugned order dated 19.08.2019 passed by the Appellate Authority, reveals that the line of enquiry made by the Appellate Authority into how the appellant / petitioner identified and sold the product in the market yielded the following results:

“13.6. As stated in preceding paragraphs, the appellant declare prominently on the packing of the goods under reference that it is "mosquito repellent cream". The advertisement and publicity of these goods is also done as a mosquito repellent. It would also not be out of place to mention that the appellant's own website www.dabuar.com, describes Odomos as a 'mosquito repellent'. No doubt, that characteristic of these goods, which aid in prevention of vector borne diseases by preventing mosquito bites, is also mentioned; however, it is a matter of common knowledge that public or market identity of the product is as a mosquito repellent.”

8. After investigation into the characteristics of the product as understood in common parlance or as perceived by the common-person or the market and its usage, the Appellate Tribunal set forth the following findings :-

“13.6. …All of the above to state the common truth that the primary motive of the common person, for using materials like the subject goods, is to save and protect themselves from mosquito bites even if there is no or negligible incidence of mosquito borne diseases in their localities. This is also borne out by the fact that odomos is not normally prescribed as a medicine by a registered medical practitioner and is available in stores and establishments of all types including "kirana stores", their sale not being restricted to chemists/druggists alone. It neither controls the disease for which mosquitoes are carrier nor develops preventive characteristics inside human body to fight against vector borne diseases. Therefore, the market identity in common parlance of the subject goods is as a mosquito repellent and their usefulness in preventing mosquito borne diseases (again derived from their characteristic quality of being a mosquito repellent) is of a subsidiary/supplementary nature.”

9. On the foot the aforesaid enquiry, the Appellate

Tribunal held as follows:

“13.7. ...However, first of all, as stated hereto before, the primary test of classification is that of common parlance, applying which, we unequivocally arrive at the identity of the product as a mosquito repellent.”

10. The Appellate Authority while upholding the conclusions of the Authority for Advance Ruling on the chemical composition of the product in question found as under:

“13.7. ...We also observe, that the appellants have stated that the active ingredient in their product is NNDB which is an improved version/formula of DEET, the active component of many mosquito repellents. The substance DEET is mentioned in the schedule to the “Insecticides Act, 1968" as an insecticide and by corollary, its improved version, i.e., NNDB would also be an insecticide. In this context, it is pertinent that mosquito repellents are classified at heading no. 38089191 of the Customs Tariff as a sub- category of insecticides.”

11. Coming to the final and the decisive issue of the correct classification, the Appellate Authority looked to the previous classification of the product under the Central Excise regime. Further in view of the unaltered composition & unchanged of the product decided the issue thus:

“13.4. We observe that the applicant was clearing the same goods i.e. 'Odomos' as mosquito repellent under Chapter heading 3808 before the advent of GST, i.e., under the Central Excise regime. Further, there is no change in the composition or intended usage of these goods after the introduction of GST and the packing thereof bears a clear declaration that the product therein is a mosquito repellent cream.”

12. The Appellate Authority invalidated the argument to classify the product under heading no. 3004909 under Heading No.3004 in the following terms:

“13.4. ...Undoubtedly, the description under heading no. 38089191, i.e.,

"Repellents for insects such as flies, mosquito" is far more specific as compared to the description under the other heading under consideration, i.e., heading no.30049099 which is "Other" (meaning medicaments other than all those explicitly specified in the other sub-headings of heading no.3004)."

13. Finally, in the wake of the aforesaid reasoning, the Appellate Authority conclusively ruled as follows :-

"In view of the foregoing discussions and findings we hereby uphold the Ruling in Order No.25 dated 20.02.2019 of the Authority for Advance Ruling that "Odomos is well covered under Chapter 38 of Customs Tariff Act and is classified under HSN 38089191."

14. The contours of an enquiry into classification of goods, have been delineated by the authority. The judicial pronouncements on the subject are consistent and have laid down the law with clarity.

15. The revenue raising intent of the taxing statute for which the products are differently classified is the guiding philosophy of such enquiry. Consequently, the understanding of the product in popular parlance / commercial language and its usage in the market are adopted, while scientific and technical meanings of the terms and expressions used are eschewed.

16. In case the scientific and technical meanings attached to the products stand at variance to the popular understanding or perception of the product, the former will yield to the latter. The manner in which the consumers use the product and perceive its nature, is a step in furtherance of the enquiry. The object, characteristics and composition of the product are also factored in determining the classification of the product.

17. The narrative will now be reinforced with good authority.

18. The general rules of interpretation of taxing statutes provide the setting for construing the tariff entries and will guide the judgment of this Court. In ***Oswal Agro Mills Ltd. and others v. Collector of Central Excise and others***, reported at ***1993 Supp (3) SCC 716***, the Hon'ble Supreme Court summarized the canons of interpretation of taxing statutes thus:

"*4.* The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of Parliament has to be gathered from the language used in the statute. … Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. In Manmohan Das v. Bishun Das a Constitution Bench held as follows:

> ".. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out."

19. The Hon'ble Supreme Court also noticed the purpose of fiscal statutes while undertaking the exercise to determine the classification of products under the Customs Tariff Act, 1975 in ***Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited***, reported at ***(2009) 12 SCC 419*** as under:

"49. The primary object of the Excise Act is to raise revenue for which various products are differently classified in the 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."

20. The Courts have consistently adopted the "common parlance test" as the most reliable standard for interpreting terms and entries in taxing statutes. This is ofcourse subject to various exceptions where the statutory text is completely contrary to the "common parlance" context. The common parlance test is also considered an extension of the established canons of statutory interpretation of taxing statutes.

21. The common parlance test was summarized and adopted by the Hon'ble Supreme Court in ***Dunlop India Ltd. v. Union of India and others***, reported at ***(1976) 2***

SCC 241, wherein it was observed as under:

"*29.* It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority.

34. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

22. The issue whether the commercial idiom used in the trade by the dealer and the consumer alike provided a definitive guide to understanding the nature of the entry fell for consideration before the Hon'ble Supreme Court in ***Indian Aluminium Cables Ltd. v. Union of India* and others**, reported at ***(1985) 3 SCC 284.*** The Hon'ble Supreme Court in ***Indian Aluminium Cables Ltd. (supra)*** ruled thus :-

"*12.* … This Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention."

23. The absurdity of adopting the technical meanings over "common parlance" in fiscal statutes was highlighted by the Hon'ble Supreme Court in ***Reliance Cellulose Products Ltd. Hyderabad v. Collector of Central Excise, Hyderabad-I Division, Hyderabad***

reported at ***(1997) 6 SCC 464*** by holding as under:

"*20.* In other words, if the word used in a fiscal statute is understood in common parlance or in the commercial world in a particular sense, it must be taken that the Excise Act has used that word in the commonly understood sense. That sense cannot be taken away by attributing a technical meaning to the word. But if the legislature itself has adopted a technical term, then that technical term has to be understood in the technical sense. In other words, if in the fiscal statute, the article in question falls within the ambit of a technical term used under a particular entry, then that article cannot be taken away from that entry and placed under the residuary entry on the pretext that the article, even though it comes within the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance. For example, if a type of explosive (RDX) is known in the market as *Kala Sabun* by a section of the people who uses these explosives, the manufacturer or importer of these explosives cannot claim that the explosives must be classified as soap and not as explosive."

24. Similarly, the Hon'ble Supreme Court in ***Shree Baidyanath Ayurved Bhavan Ltd. v. Collector of Central Excise, Nagpur,*** reported at ***(1996) 9 SCC 402*** applied the common parlance test to classify the product "*Dant Lal Manjan*", which was in issue. The Hon'ble Supreme Court held that "*Dant Lal Manjan*" did not qualify as a medicament under the Central Excise Act, by setting forth the following reasons:

"*3.* … The Tribunal rightly points out that in interpreting statutes like the Excise Act the primary object of which is to raise revenue and for which purpose various products are differently classified, resort should not be had to the scientific and technical meaning of the terms and expressions used but to their popular meaning, that is to say the meaning attached to them by those using the product. It is for this reason that the Tribunal came to the conclusion that scientific and technical meanings would not advance the case of the appellants if the same runs counter to how the product is understood in popular parlance."

25. The twin test of common parlance and the

ingredients contained in the product were succinctly summed up by the Hon'ble Supreme Court for the purpose of classification of products enumerated in tariff schedules in **Naturalle Health Products (P) Ltd. v. Collector of Central Excise, Hyderabad,** reported at **(2004) 9 SCC 136,** by holding as follows:

"*42*. We are also of the opinion that when there is no definition of any kind in the relevant taxing statute, the articles enumerated in the tariff schedules must be construed as far as possible in their ordinary or popular sense, that is, how the common man and persons dealing with it understand it. If the customers and the practitioners of Ayurvedic medicine, the dealers and the licensing officials treat the products in question as Ayurvedic medicines and not as Allopathic medicines, that fact gives an indication that they are exclusively Ayurvedic medicines or that they are used in Ayurvedic system of medicine, though it is a patented medicine. This is especially so when all the ingredients used are mentioned in the authoritative books on Ayurveda. As rightly contended by the counsel for the appellants, the essential character of the medicine and the primary function of the medicine is derived from the active ingredients contained therein and it has certainly a bearing on the determination of classification under the Central Excise Act. As held in *Amrutanjan case* [*Amrutanjan Ltd.* v. *CCE*, (1996) 9 SCC 413 : (1995) 77 ELT 500] , the mere fact that the ingredients are purified or added with some preservatives does not really alter their character."

26. The twin test method evolved by the Hon'ble Supreme Court was applied to determine the classification of a product as a cosmetic or medicament in ***Puma Ayurvedic Herbal (P) Ltd. v. Commissioner, Central Excise, Nagpur,*** reported at ***(2006) 3 SCC 266***. The two classification determining tests created by the Hon'ble Supreme Court in ***Puma Ayurvedic Herbal (supra)*** are as under:

"*2*. … In order to determine whether a product is a cosmetic or a medicament a twin test has found favour with the courts. The test has

approval of this Court also vide *CCE* v. *Richardson Hindustan Ltd.* [(2004) 9 SCC 156] There is no dispute about this as even the Revenue accepts that the test is determinative for the issue involved. The tests are:

> *I*. Whether the item is commonly understood as a 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?"

27. The Hon'ble Supreme Court in ***Commissioner of Central Excise, New Delhi v. Cannaught Plaza Restaurant Private Limited, New Delhi*** reported at ***(2012) 13 SCC 639***, declined to import conditions or restrictions contemplated in statutes with different objects and purposes to fiscal statutes by finding as under:

"46. We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of excise duty, thereby causing a loss of revenue. [See Medley Pharmaceuticals Ltd. v. CCE and Customs (SCC p. 614, para 31) and CCE v. Shree Baidyanath Ayurved Bhavan Ltd.] The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream". These provisions are for ensuring quality control and have nothing to do with the

class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the purpose and subject of which is completely different."

28. The definitions of terms in statutes having different objectives, purposes and schemes cannot be applied mechanically to fiscal statutes. The Hon'ble Supreme Court in ***Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited***, reported at ***(2009) 12 SCC 419*** held thus:

"55. True it is that Section 3(*a*) of the Drugs and Cosmetics Act, 1940 defines "Ayurvedic, siddha or unani drug" but that definition is not necessary to be imported in the new Tariff Act. The definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. As stated above, the object of the Excise Act is to raise revenue for which various products are differently classified in the new Tariff Act."

29. The stage is set to return to the facts of the case.

30. The materials in the records before the authorities below corroborate the fact that the petitioners pitched the product in their sale material and advertisements as a mosquito repellent. Various mosquito repelling qualities are identified as defining characteristics of the subject goods in the market.

31. The product is not normally prescribed as a medicine by medical practitioner as a drug. There is no restriction on sales. The product is sold on demand at the counters in shops and establishments. Sales are not restricted to chemists/druggists alone.

32. The product is a mosquito repellent by virtue of its

mosquito repelling characteristics and is so understood in common parlance. The dealers identify and sell the product as a mosquito repellent. Customers purchase the same and use it in the like manner.

33. These facts were conclusively established before the authorities below. In the wake of the said findings the common parlance test or the market identity test for classification of the product was satisfied. The conclusion that the product is a mosquito repellent is a logical sequitor of the above process of reasoning.

34. The said findings of the authorities below are consistent with the law laid down by the Hon'ble Supreme Court in successive judicial pronouncements discussed earlier.

35. The Appellate Authority while finding for the Revenue has observed that the active ingredient of the product is NNDB which is the improved version – formula of DEET. The essential quality of DEET is mosquito repelling. The NNDB was introduced to overcome the itchiness caused by the DEET. The basic component of the product is DEET while the quality enhancements are created by the NNDB.

36. Mosquito repellent quality of DEET is the dominant chemical characteristic of the product, the hallmark of its identity, and also the defining usage feature of the product.

37. There is no scientific or expert evidence in the record to support the pleading or the case of the assessee /

respondent that the NNDB imparts its essential character to the product.

38. No material / supporting scientific evidence from the record was shown to this court to establish that the creation of NNDB denudes the essential mosquito repellent quality of DEET in the product. The material in the record supports the conclusion by the authority below that the mosquito repellent characteristic of DEET is retained in the final product and forms its essence. The Appellate Authority also opined that DEET is a pesticide.

39. The plea of the assessee is a bald defence raised after the revenue had discharged its burden regarding the composition and nature of the product.

40. The holding of the Appellate Authority that the active component of the product is DEET and that NNDB is its improved version cannot be called perverse. The chemical composition test created by the Hon'ble Supreme Court, has been correctly applied by the Appellate Authority to construe the product as a mosquito repellent. For like reasons, contention of the respondent / assessee cannot be viewed with favour by this Court.

41. The interpretation of various entries and headings relating to classification of goods is guided both by the rules framed in that regard and judicial authority in point.

42. The entry being adopted by the revenue and under

which the product has been classified by the authorities below is extracted hereunder:

"**3.45** The relevant entries under Heading 3808 of the Customs Tariff Act are as under:

Tariff Item	Description of goods
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products
3808 91 91	- - - Repellents for insects such as flies and mosquitoes

43. The tariff/heading being favoured by the respondent – assessee is reproduced hereunder:

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 adminstration systems) or in forms or packings for retail sale
3004 90 99	--- Other

44. The General Rules For Interpretation of Import Tariff which guided the Appellate Authority in determination of the classification of the goods, will also aid this discussion. The relevant rules are set out hereunder for ease of reference :-

"3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or

precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

45. Under rule 3 of the general interpretation rules, resort cannot be had to a general entry called "others" or any other heading when the product clearly falls under a specific classification heading.

46. In ***Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited***, reported at ***(2009) 12 SCC 419,*** the Hon'ble Supreme Court while interpreting the Rule 3 (a) of the aforesaid Rules held as under:

"56. There is no doubt that a specific entry must prevail over a general entry. This is reflected from Rule 3(*a*) of the general Rules of interpretation that states that Heading which provides the most specific description shall be preferred to Headings providing a more general description."

47. A perusal of the classification heading no. 38089191 shows that the product in question is a neat fit into the description of products laid down therein. No laboured process of reasoning is required since the heading no.38089191, is clear as daylight.

48. The conclusion of the Appellate Authority in this regard are consistent with the Rules of interpretation and judicial authority in point.

49. The invocation of the general entry called "others"

by the petitioner is clearly misconceived, since the product in question is covered by a specific description in the heading under which the product has been classified.

50. This Court is not persuaded to take a different view in the light of the preceding discussion.

51. The preceding discussion establishes that all attributes of mosquito repellents relevant for a judicial enquiry of this nature are found in the product in question.

52. The reliance placed by the petitioner / asseessee on the judgment of this Court rendered in the case of ***M/s Balsara Hygiene Products Limited*** reported at ***1986 UPTC 367 (All.)*** is misplaced. The entry which was under consideration before this Court in ***M/s Balsara Hygiene Products Limited (supra)*** issued under Section 3 of the Uttar Pradesh Sales Tax, 1948 and read as “Medicines and pharmaceutical preparations including insecticides and pesticides”. The said entry included insecticides and pesticides within the broader category of medicines and pharmaceutical preparations. This is in complete contradistinction to the entry under the tariff heading no.3808 which is in issue in this writ petition. The rival classifications of medicament vs mosquito repellent were not examined by this Court in the case of ***M/s Balsara Hygiene Products Limited (supra)*** while the same are directly in issue in the instant writ petition.

53. Before proceeding to the last part of the discussion,

the scope and limitation of judicial review, which guide the exercise of discretionary jurisdiction under Article 226 of the Constitution of India may be stated. Judicial review is confined to the decision making process and is not directed against the decision itself. The court of judicial review examines the manner in which the decision was made. In judicial review the Court scrutinizes the correctness of the decision making process and not the decision itself. The concern of the Court exercising powers of judicial review is procedural propriety in the decision making process. While exercising powers of judicial review the Court has to find whether the decision making authority acted within its jurisdictional limits, committed errors of law, adhered to the principles of natural justice or acted in breach thereof, and whether the decision is perverse or not. The powers of judicial review are thus distinct from powers of an appellate court. The order of Appellate Authority can be judicially reviewed and not appealed against.

54. The courts exercising judicial review do not ordinarily substitute the decision of the authority by their judgment. Merely because two views are possible, a court sitting in judicial review shall not exercise its discretion in favour of an alternative view to that of the authority.

55. From the records pleadings and the arguments of the learned counsel for both the parties, this Court finds that the petitioners were given full opportunity of hearing before the authorities below. The Appellate Authority as

well as Original Authority have adhered to the principles of natural justice while deciding the controversy. The order of the Appellate Authority assailed in the instant writ petition reflects due application of mind to the relevant facts and material in the record. The order is supported with cogent reasons. No arbitrariness or perversity in the findings of the Appellate Authority could be pointed out during the course of arguments. In fact two views are not even possible in the facts of this case. The Appellate Authority as well as the Original Authority have observed full procedural propriety.

56. This is not a fit case to judicially review the impugned order. Consequently, we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner.

57. In the wake of the preceding discussion, we find that there is no palpable infirmity in the classification of the product in the order passed by the Appellate Authority. The order passed by the Appellate Authority is liable to be upheld and stands affirmed accordingly.

58. The writ petition is misconceived and is liable to be dismissed and is accordingly dismissed.

Order Date :- 17.01.2020
Ashish Tripathi

(Biswanath Somadder,J.)

(Ajay Bhanot,J.)