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**(1993) 05 MP CK 0002**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Miscellaneous Petition No. 337 of 1992

Panjon Pvt. Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** May 4, 1993

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1993) 44 ECC 141 : (1993) ECR 432

**Hon'ble Judges:** V.D. Gyani, J; M.W.Deo, J

**Bench:** Division Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

V.D. Gyani, J.

By the petition under Article 226 of the Constitution the petitioners have challenged the show cause notice dated 3.2.1992 (Ann.P.11 issued by the Assistant Collector, Central Excise.

2. The petitioner is a registered company manufacturing Ayurvedic medicines; one such preparation is known as "Swad". As per notice (Ann. P.11) the goods manufactured by the petitioners have been classified under sub-head 3003.30 as Ayurvedic medicament. Now the department contends that the products are classifiable under sub-head 2107.91 (miscellaneous edible preparations). Two grounds have been assigned for this proposed classification under sub-head 2107.91.

1. Noticee's products have no therapeutic or prophylactic uses; and

2. Products are not known as Ayurvedic medicines in common parlance nor used as medicines.

It is the petitioners case that Swad in an Ayurvedic product although it includes other ingredients which have an authoritative Ayurvedic text books Bhavprakash.

3. Shri Mathur, learned Senior Counsel appearing for the petitioners contended referring to an order dated 2.7.1992 passed by a Division Bench of this Court in M.P. No. 1297/89 [Panama Chemical Works Vs. Union of India \(UOI\)](#), ) that the preparation in question has been held to be an Ayurvedic preparation rejecting respondents contention raised in this petition as well.

4. Shri Neema learned Standing Counsel appearing for the Union of India submitted that the aforesaid order is a subject of challenge in SLP before the Supreme Court.

5. In view of the fact that the matter stands concluded by an order of this Court in M.P. No. 1297/89 decided on 2.7.92 ([1992] 40 ECC 173) and the contentions as raised by the respondents being the same, no ground for the present is made out for taking any different view or for even referring to the Larger Bench. But the fact remains that the order passed in M.P. No. 1297/89 is under challenge before the Supreme Court.

6. In the circumstances even while allowing this petition and quashing the impugned show cause notice (Ann.P.11), we make it clear that this order shall be subject to any order of the Supreme Court in case preferred against M.P. No. 1297/89,--decided on 2.7.92 ([1992] 40 ECC 173). There shall be no order as to costs.

M.W. Deo, J.

7. I have had the advantage of perusing the order prepared by my learned brother V.D. Gyani, J. There is no dispute that the question whether the preparation is an Ayurvedic preparation or not is directly under the consideration of the Supreme Court as a result of the decision of this Court on the question having been put to challenge after its decision in Misc.Petition No. 1297/89 [Panama Chemical Works Vs. Union of India \(UOI\)](#), Consequently no purpose would be served by referring this question to a larger Bench because the finding of the Supreme Court in the aforesaid petition will be binding in this case and ultimately the fate of the present petition will be governed by the decision of the Supreme Court. It is for this specific reason that I am refraining from expressing myself on the answer to the question whether the preparation in question is an Ayurvedic preparation or not. It is for this reason I find it difficult to concur with the observation in paragraph of the proposed order that the matter stands concluded by the order passed in Misc. Petition No. 1297 of 1989. To make the matter clear, but for the challenge pending in the Supreme Court, the result of which will govern the petition in hand also, I might have taken a different view from the conclusion arrived at in Misc. Petition No. 1297 of 1989. However, on account of the fact that the decision of the Supreme Court in proceedings against the order of this Court in Misc. Petition No. 1297 of 1989 shall govern the present petition also, I agree with the result mentioned in paragraph 6 of the proposed order.