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STATE OF ASSAM AND ORS.

v

SH. NARESH CHANDRA GHOSE (D) BY LRS.

DECEMBER 1, 2000

B

[V.N. KHARE AND N. SANTOSH HEGDE, JJ.]

Sales Tax:

- C *Assam Finance (Sales Tax) Act, 1956, Item 67 of the Schedule—Medicinal preparations—Classification based on strength of alcohol contents—Validity of—Spirituous medicinal preparation containing more than 12% by volume of alcohol separately classified for levy of tax under Item 67—Whether this type of classification which differentiates medicinal preparations based on content of alcohol in such preparations is a valid classification - Held, Yes—Classification being based on intelligible differntia is a valid classification.*
- D

The assessing authorities assessed the medicinal preparation 'Mritasanjibani' manufactured by the respondent, to sales tax under the Assam Finance (Sales Tax) Act, 1956, under Item 67 of the Schedule to the Act. The respondent filed writ petition challenging the assessment order. The High Court declared Item 67 of the Schedule as violative of Article 14 of the Constitution. Hence this appeal filed by the State challenging the judgment of the High Court.

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Allowing the appeals, the Court,

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HELD : The Legislature has a wide discretion in selecting the persons or objects it wants to tax. Such a classification cannot be construed as an arbitrary classification. Definitely, a medicinal preparation containing over 12% of alcohol stands as a separate class of medicinal preparation as compared to other medicinal preparations which either do not contain alcohol or contains less than 12%. This classification based on the alcohol contents of the medicinal preparation is not confined to Ayurvedic, Homeopathic or Unani medicines alone but it encompasses all spirituous medicinal preparations which are prepared under any Pharmacopoeia and containing more than 12% by volume of alcohol. Therefore, the Legislature or its delegates have not made any arbitrary classification for the purpose of levy

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**impugned. The said classification being based on intelligible differentia is, A
therefore, valid classification. [299-F, G, H; 300-A]**

Ayurveda Pharmacy and Anr. v. State of Tamil Nadu, [1989] 2 SCC 285, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 690-92 of B
1991.

From the Judgment and Order dated 11.4.90 of the Gauhati High Court in C.R. Nos. 368, 369/78 and 310 of 1982.

Vijay Hansaria, S. Borthakur and Amitesh Lal for M/s. Jain Hansarias & C
Co. for the Appellants.

Bhaskar Prasad Gupta, Swapan Kumar Dutta, Deepak Kumar Jena, Ms. Mridula Ray Bhardwaj for the Respondents.

The Judgment of the Court was delivered by

SANTOSH HEGDE, J. The medicinal preparation 'Mritasanjibani' D
manufactured by the respondent was assessed to sales-tax under the Assam Finance (Sales Tax) Act, 1956 (hereinafter referred to as 'the Act') under Item 67 of the Schedule to the Act by the assessing authorities. The challenge to the said assessment order being dismissed by the appellate authority, the respondents filed 3 writ petitions before a Division Bench of the Gauhati High Court which, while allowing the said writ petitions, declared the said Item 67 E
of the Schedule to the Act as violative of Article 14 of the Constitution. The State of Assam is in appeal before us, challenging the said judgment of the Division Bench of the High Court made in Civil Rule Nos.368, 369 of 1978 and 310 of 1982 dated 11.4.1990.

The High Court while entertaining the abovesaid writ petitions, considered F
the following 3 arguments of the respondents and held the same against them:

1. That no spirit being used in the preparation of Mritasanjibani, it cannot be termed as "spirituous medicinal preparation";
2. That there being no Ayurvedic Pharmacopoeia in existence, in the G
absence of any machinery to determine the alcoholic contents of a medicinal preparation, Item 67 cannot be given effect to;
3. That there is no finding in the instant case that Mritasanjibani contains more than 12% alcohol.

However, it proceeded to consider the constitutional validity of Item 67 of the H

A Schedule to the Act, as stated above, and following the judgment of this Court in *Ayurveda Pharmacy & Anr. v. State of Tamil Nadu*, [1989] 2 SCC 285, it declared Item 67 of the Schedule to the Act as being violative of Article 14 of the Constitution of India and directed the assessing authorities to re-assess the turnover of the respondent by treating 'Mritasanjibani' as all other Ayurvedic medicines which are exempt from sales-tax under the Act.

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The State in these appeals has contended that the finding of the High Court that the said Item of the Schedule is violative of Article 14 is erroneous. It was also contended that the judgment of this Court in *Ayurveda Pharmacy* (supra) does not apply to the facts of the case in hand, hence the High Court has erred in placing reliance on the said judgment. Per contra, on behalf of

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the respondents, it is contended that the judgment of this Court in *Ayurveda Pharmacy* (supra) applies on all fours to the facts of this case.

There is no dispute that the Legislature has a wide discretion in selecting the persons or objects it wants to tax and that a Statute cannot be challenged on the ground it levies tax on one class of articles and not on others. Bearing this well- settled principle in mind, we will now examine the provisions of the Assam Act as also the applicability of the judgment of this Court in *Ayurveda Pharmacy* (supra). For the said purpose, it is necessary for us to notice the two relevant Items in the Schedule to the Act. Item 28 which deals with the medicines and drugs for the purpose of levy of sales-tax under the Act reads thus :-

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"No.	Name of taxable goods	Rate of tax
28.	Medicines and drugs other than the following :-	
(a)	x x x	
(b)	x x x	
(c)	x x x	
(d)	Ayurvedic, Homeopathic and Unani Medicines except those covered by Item No.67 of this schedule."	7 paise in the rupee.

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As per this Item, the various drugs enumerated in sub-clauses (a) to (c) are exempted from the levy of tax, subject to the exceptions found therein. Under sub-clause (d) above, it is seen that all Ayurvedic, Homeopathic and Unani medicines are generally exempt from the levy of tax with an exception in regard to those medicinal preparations; be it Ayurvedic, Homeopathic or

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A being based on intelligible differentia is, therefore, in our opinion, a valid classification.

B It is true that in the case of Ayurveda Pharmacy (*supra*), this Court declared that the two Ayurvedic preparations termed as Arishtams and Asavas are medicinal preparations, and even though they contain a high alcohol content, *so long as they continue to be identified as medicinal preparations* (emphasis supplied) they must be treated, for the purposes of the sales tax law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol. In that case, it is to be noted that while all other patent or proprietary medicinal preparations belonging to different systems of medicines were taxed @ 7% only without any classification, C Arishtams and Asavas prepared under the Ayurvedic system alone were made subject to 30% levy. The Court also noticed the fact that there were at relevant point of time over 130 Allopathic medicines containing alcohol which were potable as against only 3 Ayurvedic medicines out of which Arishtams and Asavas were alone subject to 30% tax. While other medicinal preparations D which also contained alcohol were subjected to a tax @ 7% alone. Therefore, this Court came to the conclusion that while Arishtams and Asavas continued to be identified as medicinal preparations, they must be treated alike for the purpose of sales-tax. The law in this case is different from the law that was considered by this Court in Ayurveda Pharmacy's case (*supra*). It is already E noticed that for the purpose of Item 28, Ayurvedic, Homeopathic and Unani medicines either not containing alcohol or containing less than 12% alcohol have been exempted from the levy of sales-tax but the Legislature thought that in regard to the medicinal preparations irrespective of the fact whether they are Allopathic, Ayurvedic, Homeopathic or Unani have to be separately classified as "spirituous medicinal preparations" if it contained more than 12% F by volume of alcohol (See Item 67). Therefore, so far as the Assam Act is concerned, unlike the Tamil Nadu General Sales Tax Act, 1959, it identified the medicinal preparations containing more than 12% alcohol as a separate class *vis-a-vis* such preparations either not containing alcohol or containing less than 12% alcohol. This difference distinguishes the basis of the judgment of G this Court in Ayurveda Pharmacy's case (*supra*) inasmuch as the Assam Act does not identify the medicinal preparations containing more than 12% alcohol as being the same as other medicinal preparations not containing alcohol. On the contrary, as could be seen these types of spirituous medicinal preparations which contained 12% alcohol have been separately classified for the levy of tax under Item 67 of the Schedule to the Act. We are of the considered view H that the classification founded in the impugned Act in regard to the medicinal

preparations based on the strength of alcohol contents in the same, cannot **A**
be said to be arbitrary and violative of Article 14 as held by the High Court
in its impugned judgment. For the reasons stated above, these appeals succeed,
the impugned judgments of the High Court are set aside and the writ petitions
filed by the respondents before the High Court stand dismissed.

R.A.

Appeals allowed. **B**