



2026:AHC-LKO:20845

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SALES/TRADE TAX REVISION No. - 71 of 2011

M/S Ashutosh Trading Company Thru Partner Smt.
Raj Kumari Ag

.....Revisionist(s)

Versus

Commercial Tax Tribunal U.P. Lucknow Thru
President And Ors.

.....Opposite
Party(s)

Counsel for Revisionist(s) : Abhinav N. Trivedi, Ashish Kumar
Pathak, Shubham Agarwal, Yogesh
Chandra Srivastava

Counsel for Opposite Party(s) : C.S.C.

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Shubham Agarwal, Advocate assisted by Sri Yogesh Chandra Srivastava, learned counsel for the petitioner as well as Sri Ajay Kumar Singh, learned Standing Counsel appearing for the respondents.

2. It has been submitted by learned counsel for the petitioner that the revisionist is a trader of Sarbat Rooh-Afza and Unani Medicines manufactured by Hamdard (Wakf) Laboratory, Ghaziabad, in the capacity of Super Stockiest.

3. Dispute in the present case is with regard to applicability of tax under the U.P. V.A.T Act, 2008 wherein the State had considered Rooh Afza to be covered under Entry 583 of Part - I of the Schedule-C, while it was the contention of the petitioner that Rooh Afza would qualify as "fruit based drink" and would attract tax @ of 4%.

4. It has been jointly submitted by learned counsel for the parties that the issue has been decided by the Hon'ble Supreme Court in the case of **M/s Hamdard (Wakf) Laboratories Vs. Commissioner of Commercial Tax, U.P. Commercial** in **Civil Appeal Nos. 2557-2578 of 2026** (decided on 25.02.2026), wherein the Apex Court has held as under :-

"38. Viewed cumulatively:

- i) The product contains declared fruit juice and derives its essential beverage identity from fruit-based constituents.*
- ii) Entry 103 of Schedule II, Part A of the UPVAT Act is illustrative and inclusive in character and does not prescribe any quantitative threshold of fruit content.*
- iii) Regulatory or licensing classification cannot control or curtail the interpretation of a fiscal entry;*
- iv) The Revenue has failed to discharge the burden of proving that the product falls outside Entry 103 and within the residuary entry; and*
- v) Resort to the residuary entry is impermissible where classification under a specific entry is reasonably and sustainably possible.*

39. The concurrent findings recorded by the authorities and affirmed by the High Court cannot therefore be regarded as pure findings of fact so as to be insulated from appellate interference. They are conclusions arrived at upon an erroneous application of settled principles governing fiscal classification and are vitiated by a clear misdirection in law. Consequently, such findings warrant interference by this Court.

40. Accordingly, it is held that "Sharbat Rooh Afza" is classifiable under Entry 103 of Schedule II, Part A of the UPVAT Act as a fruit drink / processed fruit product and is exigible to VAT at the concessional rate of 4% during the relevant assessment years. The impugned judgment(s) affirming classification under the residuary entry and levy at 12.5% are set aside."

5. Considering the aforesaid judgment of the Apex Court in the case of **M/s Hamdard (Wakf) Laboratories (supra)**, the Court has considered "Sharbat Rooh Afza" to be classifiable under Entry 103 of Schedule II, Part A of the UPVAT Act as a "fruit drink/processed fruit product" and that same is eligible to VAT at the concessional rate of 4%.

6. Accordingly, impugned judgment and order dated 09.03.2011, passed by the Commercial Tax Tribunal, wherein the Tribunal has returned finding contrary to what has been held by the Apex Court in the case of

M/s Hamdard (Wakf) Laboratories (supra), is hereby set aside.

7. The present revision is **allowed** in terms of the judgment of the Apex Court rendered in the case of **M/s Hamdard (Wakf) Laboratories (supra)**.

(Alok Mathur,J.)

March 23, 2026

A. Verma