Technical Concepts Vs. Commissioner of Central Excise

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Court : Authority for Advance Rulings

Decided On : Oct-06-2005

Reported in : (2005)(189)ELT15AAR

Judge : S S Quadri, S Pal, B Agrawal

Appellant : Technical Concepts

Respondent : Commissioner of Central Excise

Judgement :
Appellants: Technical Concepts International Ltd. Vs.

Syed Shah Mohammed Quadri, J. (Chairman), Somnath Pal and B.A. Agrawal, Members Central Excise Act, 1944 - Section 23C; Central Excise Tariff Act, 1985; Medicinal and Toilet Preparation (Excise Duties) Act, 1955 - Section 2; Town Police Clauses Act 1847; Finance Act, 1894 - Section 8(4); Person Act, 1837; Income Tax Act, 1952; Punjab General Sales Tax Act; Sunday Observance Act, 1977; Metropolitan Building Act, 1855; Madras General Sales Tax Act, 1959; Andhra Pradesh General Sales Tax Act, 1957; Andhra Pradesh General Sales Tax (Amendment) Act, 1985 Brownsea Haven Properties v. Poole Corporation; I.R.C. v. Frere; Pardeep Agarbatti v. State of Punjab; R. v. Cleworth; Bush Boake Allen India Pvt. Ltd. v. Board of Revenue (Commercial Taxes), Chepauk; Sarin Chemical Lab. v. CST, 26 STC 339 SC; State of Gujarat v. Prakash Trading Co.,G. Radhakrishna Murthy and Company and Ors. v.Commercial Tax Officer-IVB, Vijayawada and Ors.; Sonic Electochem Ltd. v. Commissioner, Civil appeal

No. 5707 of 2004; Dabur India Ltd. and Anr. v. State of Uttar Pradesh and Ors.; Baidyanath Ayurved Bhawan (Pvt) Ltd. Jhansi v. The Excise Commissioner UP and Ors.

1. In this application under Section 23C of the Central Excise Act, 1944 (for short "the Excise Act"), the applicant, a company incorporated and registered in the United Kingdom (UK), intends to set up a joint venture in India to undertake the manufacture and marketing of "room deodorizers" and "room fresheners" (together referred to in this ruling as "the Products"). The joint venture company would initially have the products manufactured on a job work basis in Aurnagabad, State of Maharasthra. The components and formulation required for the manufacture of the products by the joint venture company will be supplied by the applicant. The description of the products is given as follows: "The product consists of a holder and a dispenser. The dispenser is filled with the odoriferous substances, which is the room freshener.

The products dispense a continuous dose of the room freshener into the room to ensure that the room is smelling pleasant at all times.

The dispenser is required to be replaced from time to time when the dispensable quantity of the room freshener as contained in the dispenser is exhausted." However at the oral hearing, Mr. Tarun Gulati clarified that the products are only tinned odoriferous substances containing alcohol. It is stated that the normal use of the products is in households, offices, restaurants, airport lounges and other public places. On these facts the applicant seeks advance ruling of the Authority on the following reframed question:- "Whether the products (room deodorizers and room deodorizers and room freshener) merit classification under chapter 33 of the Central Excise Tariff Act, 1985".

The proposed classification by the applicant is disputed and it is stated that the products fall within he meaning of "perfumery", "cosmetics" of "toilet preparations" specified under note 1 (d) of Chapter 33 of the "Central Excise Tariff Act" as defined in Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (for short "the MTP Act") as they contain Ethyl alcohol. It is added that as they contain alcohol, they cannot be classified under Chapter 33 of the First Schedule to the

Central Excise Tariff Act, 1985 (for short "the Tariff Act"). Though heading 3307 of the First Schedule to the Tariff Act mentions prepared room deodorized, it cannot be read in isolation of the Notes to Chapter 33. It is only when he products do not contain alcohol, they can be classified under the said heading. The product are, therefore, classifiable under the MTP Act and are liable to State Excise Duty thereunder.

3. Mr. Tarun Gulati, learned counsel appearing for the applicant,. has contended that the products are classifiable under heading 3307 of the Tariff Act; notes 1(d), 3 and 4 of Chapter 33, have to be read conjointly and not in isolation; if the definitions of the expressions in note 1(d) as given in MTP Act are interpreted applying the principle of noscitur a sociis' and ejusdem generis'; the products will not be covered by note 1(d) and as heading 3307 of the schedule to the Tariff Act includes prepared room deodorizers, they will be classifiable under it. Mr. Roy, learned departmental representative, has argued that as the products contain alcohol, they will be covered by the MTP Act; even if the products do not fall within the meaning of the expressions "perfumery", "cosmetics" or "toilet preparations", specified in note 1(d0 of Chapter 33, they can not be classified under the Chapter as they contain alcohol; the words 'prepared room deodorisers in the heading could not be read in isolation ignoring note 1(d) to Chapter Though the question as reframed requires the Authority to give ruling on classification of the products under the Tariff Act, having regard to the scope of the question, it will be apt to consider the relevant provisions of the Tariff Act as well as the MTP Act.

We shall commence out discussion with notes to Chapter 33. Notes 1(d), 3 and 4 are relevant for the present discussion, which read as under : (d) perfumery, cosmetics and toilet preparations containing alcohol or opium, Indian hemp or other narcotics and for this purposes, these expressions have the meanings respectively assigned to them in Section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) 3. Headings 3303 to 3307 apply, inter alia, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retails for such use.

4. The expression "perfumery, cosmetic or toilet preparations" in heading 3307 applies, inter alia, to the following products; scented sachets, odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solution; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations." Note 1(d), quoted above, says that perfumery, cosmetics and toilet preparations containing alcohol or opium, Indian hemp or other narcotics are not covered by Chapter 33 and that these expressions have the meanings respectively assigned to them in Section 2 of the MTP Act.

This takes use to the definition clause of MTP Act. The expressions "perfumery" and "cosmetics" are not defined in Section 2 of MTP Act.

They are not technical terms of art or science; therefore they have to be understood in their ordinary meaning, that is, the meaning in which they are commonly used by English speaking people. Thus understood they are articles meant for beautification or enjoyment of human beings.

The expression 'toilet preparation is defined in clause (k) of Section 2 of the said Act thus : "toilet preparation' means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair to teeth, and includes deodorants and perfumes." Before embarking upon the task of interpretation of these provisions it will be useful to advert to the principles of 'noscitur a sociis' and 'ejusdem generis' referred to by Mr. Gulati. They are rules of interpretation of statutes. Where two or more words having similar meaning are grouped together in a statute, the word having general meaning is taken to have been used in the sense of the accompanying less general word. The enunciation of the principle is given in "Craies on statute Law" as follows : "This rule of law, generally known as the ejusdem generis rule, or the rule noscitur a sociis, was thus enunciated by Lord Campbell in R.V. Edmundson : "I accede," said he, "to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." it is really a question of the assumed intention of the statute".

Two of the cases cited by him would highlight the application of the principle. They are quoted hereunder : "In Brownsea Haven Properties v. Poole Corpn. the words "in any case" in a provision in the Town Police Clauses Act 1847 giving power to control tariff routes "in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed," were held to be confined to cases within the category of which public processions, rejoicings and illuminations are specific instances and should not be extended to cover the circumstances of ordinary day-to-day tariff conditions.

In Re Latham decs. It was held that the words "or other person" in the pharse "trustee, guardian, committee or other person" in Section 8(4) of the Finance Act 1894 meant a person in a similar position to a trustee, etc., and could not refer to a person beneficially interested." The import of this rule is best explained in a concise formulation by Francis Bennion in the following words : "A statutory term is recognized by its associated words. The Latin maxim noscitur a sociis states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings".

Maxwell's Interpretation of Statutes alluded to a few good example of application of this rule; the following among them, would be instructive.

"The noscitur a sociis rule was applied to the construction of the Offences against the Person Act 1837, which made if felony to shoot at or to "stab, cut or wound" any person. The word "wound" was held to be restricted by the words which preceded it to injuries inflicted by an instrument, and consequently to bite off a finger or a nose, or to burn the face with vitriol, was not to wound within the meaning of the Act." "In I.R.C. v. Frere, the House of Lords held that the word "interest" in the phrase, "interest, annuities or other annual payments" in the Income Tax Act 1952 meant annual interest". (1965 A.C. 402) In Pardeep Agarbatti v. State of Punjab, the Hon'ble Supreme Court elucidated the principle of 'noscitur a sociis' as follows : Entries in the schedules of Sales Tax and Excise Statues list some articles separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein.

In that case Entry 16 of Punjab General Sales Tax Act as it stood in 1973-74 fell for consideration of the Court. The entry read as follows : "Cosmetics, perfumery and toilet goods, excluding toothpaste, tooth powder, kum-kum and soap." The said Entry No. 16 was broken up into Entries 16 and 16A by a notification dated 28th September, 1979, The new Entries read thus : "16. Cosmetics, and toilet goods excluding toothpaste, tooth powder, kum-kum and soap.

The question was whether 'dhoop' and 'aggarbatti' were taxable under the un-amended entry on the ground that they fell within the meaning of perfumery occurring in the entry. It was held by the Hon'ble Supreme Court, "the word 'perfumery' in the said entry 16 draws colour from the words 'cosmetics' and toilet goods therein and that so read, the word 'perfumery' in the said Entry 16 can only refer to such articles of perfumery as are used as cosmetics and toilet goods are, upon the person. The word 'perfumery' in the context in which it is used has, therefore no application to 'dhoop' and 'aggarbatti'.

Lord Cockburn C.J. in R. v. Cleworth 1864 4 B. & S. 927 elucidated the ejusdem generis rule thus : "according to a well established rule in the construction of statutes, general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the Legislature". Quoting that case Maxwell formulated the rule as follows : "In other words, the general expression to be read as comprehending only things of the same king as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended". It would be interesting to extract from Maxwell a few examples of the application of ejusdem generis : "The Sunday Observance Act 1977, which enacts that 'no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day" was held not to include a coach proprietor, a farmer or a barber, the word "person being confined to callings like those specified by the preceding words.

The Metropolitan Building Act 1855, which entitled a district surveyor "or other person" to a month's notice of action for anything done under the Act, was held, on the same principle, to given that privilege, not to every person sued, but only to persons ejusdem generis with a district surveyor, that is, persons having an official duty.

In an Act imposing on unqualified persons navigating "any wherry, lighter, or other craft," the last word would include only vessels of the same king as wherries or lighters, and not steam tugs which carried neither passengers nor goods. But the same word following "boats and vessels" would be more comprehensive." A good example of the application of the principle of ejusdem generis is also contained in the decision of Madras High Court in A. Boake Robert And Co. (India) Ltd. Now Bush Boake Allen India Pvt. Ltd. v.Board of Revenue (Commercial Taxes), Chepauk, Madras - 5 which is relied upon by Mr. Gulati. In that case item 51 of the First Schedule to the Madras General Sales Tax Act, 1959 fell for consideration on the Division Bench of the Madras High Court. Item 51 read as follows : "Scents and perfumes, powders, snows, scented hair oils, scented sticks, cosmetics and toilet requisites, except soaps".

The assessee was manufacturing, synthetic essential oils which were utilized for the purpose of making toilet requisites such as soaps, powders or cosmetics. Whether those oils would all within the meaning of Item 51 of the First Schedule to the Act, was in issue. While interpreting the word "toilet requisites" the Madras High Court observed thus : "It is well-known principle of law that if there are enumerated items in an entry and it is followed by a general expression of other items or words like "toilet requisites", rules of ejusdem generis will apply and toilet requisites will have to be construed or "other items" will have to e construed as being of the same nature as the items mentioned earlier provides it is possible to inter from the specified item a genesis which can be projected on to other unspecified items. Equally well-established is another principles that when we are to construe particular words in an entry like the entry in item 51 of the First Schedule to the Madras General Sales Tax Act, it is not as through we must take any particular item, find out its dictionary meaning or the meanings attributable to that particular item and disregard the effect on that item arising from the association with other items and the limitation or expansion of the meaning of that item by such association. These are principles too well-established to need quoting any authority." The High Court held that "perfumes" occurring in that item which is the word relied on by the counsel for the revenue as supporting his contention that those synthetic essential oils fell within that item and were, therefore, taxable at the single point on the rate mentioned against that item, could not be accepted.

Keeping the above principles in mind, we shall grapple with our task.

It may be noticed that the definition of the expression "toilet preparations" takes in any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description or any substances intended to cleanse, improve or alter the complexion, skin, hair or teeth and includes deodorants and perfumes. For a proper understanding of the definition the key words are "toilet of the human body". The dictionary meaning of the term "toilet" may be noticed here to comprehend the meaning of those words. The meaning of "toilet" in Webster's Comprehensive Dictionary of the English Language 2003 Edition is as follows : "toi-let - 1 A fixture in the shape of a bowl, used for urination and defecation. 2. A lavatory or watercloset; also a bathroom. 3.

The act or process of dressing oneself; formerly, especially of dressing the hair. 4. Attire; toilette, also, a toilette or costume, - ad. Used in dressing or grooming : toilet articles F toilette orig. a cloth dressing gown, dim. of toile cloth. See TOIL]" "toilet n. 1. a large bowl for urinating or defecating into, typically plumbed into a sewage system. 2 the process of washing oneself, dressing, and attending to one's appearance. (as modifier) denoting articles used in this process. 3. the cleansing of part of a person's body as medical procedure. v. (toileted, toileting) usu.

as noun toileting assist or supervise (an infant or invalid) in using a toilet.

ORIGIN C16 (orig. denoting a cloth cover for dressing table, later a dressing room, and, in the US, one with washing facilities) : from Fr. toilette 'cloth, wrapper', dimin, of toilet (see TOILE)" Toilet - An act or process of dressing, esp. formerly of dressing hair and now usually cleaning and grooming of one's person (Webster's Int. Dic.) - Sarin Chemical Lab. v. CST 26 STC 339 SC; State of Gujarat v.

Prakash Trading Co.

It is worth noticing that the definition uses the expression "toilet of human body" and not "toilet for human beings". In its primary meaning the word 'toilet is commonly understood to indicate a bowl used for urinating or defecating, a lavatory or a bath room, its secondary meaning 'the act or process of dressing oneself' is not so common.

Justice G.P. Singh in his classic treatise on interpretation of statutes notes, "But in applying the rule the secondary meaning i.e.

the less common meaning of a word should not be confounded with its lose meaning. Preference for secondary meaning of a word when the purpose of the statute in which is is used points to that meaning is permissible and adoption of that course does not offend the rule that preference should not be given to loose meaning". Therefore though on the first blush, the expression "toilet of human body" seems baffling, yet on a keen reading, the import of the expression is unfolded to mean any preparation which is intended for use in cleansing, dressing or hair dressing and preparing a human being. Passing over the words 'in perfuming apparel of any description, for the time being in the definition of 'toilet preparation', it would read, any preparation which is intended for use in cleansing, dressing or hair dressing of human body or alter the complexion, skin, hair or teeth and includes deodorants and perfumes. It may be noticed that every preparation referred to there is in relation to human body and the said words "perfuming apparel of any description' are also used in relation to human body. It is, therefore, clear to us that the expression "toilet of human body" postulates such preparations falling within the meaning of perfumery, cosmetic and toilet preparation as are meant to be applied to human body.

The phrase "containing alcohol, opium Indian hemp or other narcotic' is an adjectival phrase which qualifies perfumery, cosmetics and toilet preparations. The effect of Note 1 (d), in our view, would, therefore, be that if a preparation in the nature of perfumery, cosmetics and toilet preparation falls within the meaning of the MTP Act and contains alcohol or opium or Indian hemp and other narcotic, it would get excluded from the purview of Chapter 33. However, it does not follow that a preparation of the description of perfumery, cosmetics and toilet preparations containing alcohol etc. but not covered by the MTP Act, would also get excluded from Chapter 33 for the sole reason that it contains alcohol. Indeed a careful reading of clauses (c) and (k) of Section 2 and item 4 of the Schedule of the MTP Act discloses that what is chargeable to levy under the MTP Act is excluded from the operation of chapter 33 of Tariff Act. Therefore, it follows that the aforementioned preparations, which are not chargeable under the MTP Act but, otherwise, satisfy the requirements of heading 3307 of the Tariff Act, cannot be excluded from the said heading on the ground of having an alcohol component. For the aforementioned reasons we are unable to accept the submission of the departmental representative that where a preparation of perfumery, cosmetics or toilet preparations contains alcohol or opium etc., it can under no circumstances be brought under Chapter 33. In our view, if a product does not fall within the meaning of perfumery, cosmetics or toilet preparations as defined in MTP Act, it is immaterial for purpose of Chapter 33 whether it does or does not contain alcohol, opium etc. In the instance case, we have noticed above that the expressions - perfumery, cosmetics and toilet preparations - as defined in Section 2 of the MTP Act - are confined to preparations which are used in relation to human body and the products in question have not such nexus with the human body; therefore, they are not excluded by note 1(d) to Chapter 33.

We shall advert to notes 3 and 4 to Chapter 33 of the Tariff Act, which are explanatory. Note 3 says that headings 3303 to 3307 apply, inter alia, to products, whether or not mixed, suitable for use as goods of these headings and put up in packings of a king sold by retail for such use. However, aqueous distillates and aqueous solutions of essential oils are excluded from the aforementioned headings. The products in question, sought to be classified under heading 3307, do not fall in the excluded categories.

Note 4 says that expressions "perfumery", "cosmetic" and "toilet preparations" apply, inter alia, to scented sachets, odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solution; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations. it is evident that note 4 is not exhaustive, it does not embody all the products which may fall under the purview of those expressions, however, it enumerates certain products falling within the purview of the said expressions.

The applicant has indicated that the use of the products is in households, offices, restaurants, airport lounges and other public places. If they can also be used in the toilets for human beings, it would make no difference because the fact that the products can a well be used in the toilets for human being as also in other places will be of no consequence. We, therefore, conclude that Note 1(d) read with Notes 3 and 4 does not exclude the products from Chapter 33.

Now we shall read heading 3307 of the Tariff Act, which is in the following terms :Tariff item Description of goods Unit Rate of duty3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories 0 0 and other perfumery, cosmetic or10 Pre-shave, shaving or after-shave preparations 0 03307 cream Kg.

16%330710 90 Other Kg.

16%330720 00 Personal deodorants and anti Kg 16%330730 Perfumed bath salts and other bath preparations30 10 Bath oil (thailam) Kg 16%33073307 "Aggarbatti" and other odoriferous41 00 preparations which operate by burning Kg Nil3307 Other49 00 Kg 16%3307 90 Other:90 10 Depilatories Kg 16%330790 20 Sterile contact lens care solution Kg 16%3307 A careful reading of the main heading extracted above, would show that it has two limbs. The first limb mentions pre-shave, shaving or after-shave preparation personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations not elsewhere specified or included. All these preparation (not specified or included elsewhere) are intended to be used as toiletries by human being. The second limb speaks of prepared room deodorizers, whether or not perfumed or having disinfectant properties which are not meant for use on the person of a human being. The first part of the third sub-heading "preparations for perfuming or deodorizing rooms including odoriferous preparations used during religious rites" represents the second part of the main heading and is in very wide terms.

Aggarbatti and other odoriferous preparations, which operate by burning are included within the ambit of the sub-heading but they do not restrict the meaning of the sub-heading to those preparations only.

4. Mr. Gulati relied on the judgment of the Hon'ble Supreme Court in G .Radhakrishna Murthy and Company and Ors. v. Commercial Tax Officer-IVB, Vijayawada and Ors. That case arose under the Andhra Pradesh General Sales Tax Act, 1957 and Andhra Pradesh General Sales Tax (Amendment) Act, 1985. The question for consideration was whether agarbatti were liable to tax under Item 36 of First Schedule. After amendment of the Act, scents and perfumes are brought under Item 36, which read as follows : "36. Cosmetics and toilet preparations including scents, perfumes, face powder, talcum powders, hair tonics, hair oils, face creams and snows pomades, depilatories, tooth powder, toothpaste, toothbrushes and shaving creams." "This thing specially mentioned in the entry "cosmetic and toilet preparations" are all of the nature of personal application, Incense sticks or agarbattis are goods of a different character altogether".

And it was held that having regard to articles included in item 36 of the First Schedule, under the heading, "Cosmetics and toilet preparations", the meaning of "perfume" cannot be extended to include agarbattis.

Mr. Gulati has rightly relied upon an order of the Hon'ble Supreme court dated 10.12.2004 dismissing Civil appeal No. 5707 of 2004 (Sonic Electochem Ltd. v. Commissioner) against the CESTAT Order NO.218/2004-NB(C) Dated 5.3.2004, wherein the Tribunal held that Air Purifier intended to be used in room, toilet, bath room was classifiable as Air Purifier under sub-heading 3307.49 of Central Excise Tariff Act.

Another case cited by Mr. Gulati relates to "Jet fresh" and "Jet fresh" also supports out view. In that case the CESTAT by its order dated 7.4.2000 held that those goods were primarily used as Air Purifier although they might incidentally act as a moth repellant and were for continuous use, unlike insecticides, would be classifiable under sub-heading 3307.49 of the Tariff Act. Against that order the Hon'ble Supreme Court dismissed Civil Appeal No. 4966 of 2000 on 25.9.2000.

The learned departmental representative invited out attention to the decision of the Hon'ble Supreme Court in Dabur India Ltd. and Anr. v.State of Uttar Pradesh and Ors. In that case the writ petitioner challenged levy of duty on homeodent under the MTP Act and contended that it was classifiable under the Central Excise Act. It was held that homeodent was a medicinal land toilet preparation liable to excise duty under the MTP Act under which to attract duty all that was required was that a medicinal preparation should contain alcohol directly or indirectly and because one of the components of homeodent contained alcohol, the requirement was satisfied.

In Baidyanath Ayurved Bhawan (Pvt) Ltd. Jhansi v. the Excise Commissioner UP and Ors., the appellant therein was manufacturing tincture, which contained alcohol. The appellant resisted the demand of duty under the MTP Act on the ground that medicine in question was not prepared by adding pure alcohol but that a component of the medicine contained alcohol. The Superintendent of Excise as well as the High Court rejected the challenge against the demand. The Hon'ble Supreme Court rejected the appeal against the order of the High Court. Indeed that decision was referred to in Dabur's case (supra).

Having carefully gone through these decisions of the Hon'ble Supreme Court, we are of the view that they do not support the contention of the Commissioner that even if the products do not fall within the meaning of toilet preparations as defined in MTP Act, but as they contain alcohol, they are dutiable under that Act. Indeed in those cases admittedly the goods answered the definition of medicinal preparation within the meaning of the MTP Act; the controversy centered around the point that as alcohol was not used directly in manufacture of the preparations, they were not covered by that Act.

From the above discussions it follows that the products in question fall under the heading 3307 and are classifiable under tariff item 3307 49 00. Accordingly we rule on the said question that though the products contain alcohol, they are classifiable under Chapter 33 of the Tariff Act.