

Gujarat Distributors Vs. the State of Gujarat

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SooperKanoon Citation : sooperkanoon.com/734682

Court : Gujarat

Decided On : Aug-14-1974

Reported in : [1975]36STC116(Guj)

Judge : J.B. Mehta and; T.U. Mehta, JJ.

Acts : Bombay Sales Tax Act, 1959 - Sections 52

Appeal No. : Sales Tax Reference No. 3 of 1974

Appellant : Gujarat Distributors

Respondent : The State of Gujarat

Advocate for Def. : G.T. Nanavati and; H.V. Chhatrapati, Advs. of Bhaishanker Kanga and Girdharlal

Advocate for Pet/Ap. : R.D. Pathak, Adv. for; S.L. Modi and;N.I. Modi

Judgement :

T.U. Mehta, J.

1. This reference involves the question, whether the chemical products known as Aldrex, Dieldrex and Endrex, which are sold by the applicant, are the 'chemicals' covered by entry 4 of Schedule C to the Bombay Sales Tax Act, 1959, or are the articles which fall within the residuary entry 22 of Schedule E of the Act.

2. This reference has arisen as the applicant applied to the Deputy Commissioner, Sales Tax, on 5th November, 1968, under section 52 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as the 'Act'), for determining the rate of tax payable on the sales of the above-named articles. The Tribunal in appeal filed by the petitioner has held that these articles do not fall within entry 4 of Schedule C of the Act and that, therefore, the revenue has rightly taken these articles as covered by the residuary entry 22 of the Schedule E. Feeling aggrieved by the decision of the Tribunal, the petitioner has approached this court in this reference.

3. The articles referred to above are insecticides which are used for the production of agricultural products. The petitioner is found to be purchasing these articles from M/s. Burmah-Shell and selling them locally in the market. The trade literature relating to all the three articles was produced during the course of the inquiry. This literature shows that all these articles are poisonous, and may be fatal by skin contact, inhalation or swallowing spray mist. The trade literature describes these articles as 'Shell Chemicals' for agriculture and industry. They are used for spraying the standing agricultural produce by mixing them with enough water, as directed by the manufacturers. The articles were also examined by Drugs and Chemicals. Testing Laboratory, Bhavnagar, and the analysis conducted by the said laboratory reveals as under :

1. 'Result of analysis of Endrex 20 e.c. : Endrin content : 19.90 per cent W/v. (Hexachloro-epoxy-octahydro-endo, endo-dimethano-Naphthalene). Volatile hydrocarbons : 68.00 per cent W/v. Other material : 12.10 per cent W/v.'

The result of this analysis indicate in the opinion of the above-referred testing laboratory at Bhavnagar that the sample of Endrex 20 e.c. is a solution containing the above substances which are chemicals derived by chemical process.

2. 'Result of analysis of Dieldrex 18 e.c. Dieldrin content : 17.8 per cent W/v. (Hexachloro-epoxy-octahydro-endo, exo-dimethano-Naphthalene). Volatile hydrocarbons : 68.00 per cent W/v. Other material : 2.15 per cent (by difference).'

The opinion of the laboratory is that Dieldrex 18 e.c. is a solution containing the above-named substances which are chemicals derived by chemical process.

3. 'Result of analysis of Aldrex 80 e.c. Aldrin content : 29.8 per cent W/v. Hexachloro-Hexahydro-endo, exo-dimethano-Naphthalene. Volatile hydrocarbons : 68.00 per cent W/v. Other material : 2.2 per cent (by difference).'

The opinion of the laboratory is that Aldrex 30 e.c. is a solution containing the above-named substances which are chemicals derived by chemical processes.

The Tribunal, after referring to this analysis and the opinion given by the laboratory, found that the products in question were the compound of three different types of commodities of which 17 to 30 per cent is the main chemical known by names resembling the commercial names under which the compounds were sold. The Tribunal concluded that the articles did not fall within entry No. 4 of Schedule C, but within the residuary entry, namely, entry No. 22 of Schedule E of the Act.

4. Shri Pathak, who appeared before us contended that entry No. 4 of Schedule C covers all dyes and chemicals and since these disputed articles are chemicals as found in the analysis, referred to above, they should be held as falling within this entry No. 4 of Schedule C.

5. At this stage, it would be proper to make reference to the two entries with which we are concerned for the purpose of this reference. Entry No. 4 of Schedule C is as under :

'Dyes and chemicals other than those specified in any other entry in this or any other schedule.'

Entry No. 22 of Schedule E, which is the residuary entry is in the following terms :

'All goods other than those specified from time to time in section 14B and in Schedules A, B, C and D and in the preceding entries.'

It is thus evident that entry No. 4 of Schedule C is the residuary entry for dyes and chemicals while entry No. 22 of Schedule E is the general residuary entry covering all articles which are not specifically described in any of the four schedules attached to the Act.

6. The short question which arises to be determined is whether the disputed articles can be considered as chemicals as stipulated by entry No. 4 or not. If they can be considered as such chemicals, then the petitioner should succeed, but if they are not found to be 'chemicals' as stipulated by entry No. 4, then obviously they would fall within the ambit of entry No. 22 of Schedule E because there is no specific entry in any of the four schedules mentioning any of these four articles.

7. The first question which arises to be considered is what is meant by the word 'chemicals'. The contention of Shri Pathak, who appeared on behalf of the petitioner, was that since the disputed articles have been manufactured out of the chemicals as shown by the chemical analysis, they should be treated as chemicals contemplated by entry No. 4 of Schedule C. On close consideration of the scheme of the schedules and the meaning of the word 'chemicals' as found in entry No. 4 of Schedule C, we find ourselves unable to accept this argument of Shri Pathak. We may first consider the broad classification within which the chemicals would fall. Encyclopaedia Britannica discusses this aspect of the matter under the caption 'chemical industry' in 5th Volume as under :

'The chemical industry is one of the great giants of the technological world making products used in practically every aspect of life. From such ordinary raw materials as coal, salt, limestone, sulphur, air, water and petroleum, the chemical industry turns out a prodigious number of compounds that are essential to the operations of every other industry.

Some chemicals, such as aspirin and baking soda, are familiar to nearly everyone, but many more are as far removed from the average consumer as is the factory from the departmental store. There are two reasons for this anomaly. In the first place, the chemical industry is its own best customer, converting many of its chemicals into 'intermediates' or building blocks that it uses to produce such materials as dyes, drugs, explosives, flavourings and plastics. Secondly, myriads of chemicals enter the processing industries where they are utilised to make the thousands of mass produced items. The distinction between the processing group, which uses chemicals as a means to make something else, and the chemical industry proper, which manufactures chemicals as end-products, appears to be

disappearing as the chemical industry continues to expand its boundaries in all directions ...

Establishments in this major groups manufacture three general classes of products :

- (1) basic chemicals such as acids, alkalies, salts and organic chemicals;
- (2) chemical products to be used in further manufacture such as man-made fibres, plastic materials, crude animal and vegetable oils, dry colours and pigments; and
- (3) finished chemical products to be used for ultimate consumption, such as drugs, cosmetics and soaps, or to be used as materials or supplies in other industries, such as paints, fertilizers and explosives.'

This shows that, broadly speaking, all chemicals which are used in the commercial world can be classified as (1) basic chemicals, (2) chemical products which are intermediary and which are used for producing other finished articles, and (3) end-products, which are ready for final consumption. Speaking of entry No. 4 of Schedule C which contemplates 'dyes and chemicals', we have to consider in what particular category out of the three categories mentioned above, the word 'chemicals' used in entry No. 4 of Schedule C falls. Is it a basic chemical or an intermediary chemical or an end-product In order to decide this question, we have necessarily to bear in mind the fact that the word 'chemicals' is put by the legislature along with the word 'dyes'. The use of both the words in the same entry supplies some clue as to the collection and the colour which one would take from the other. In other words, the use of both these words together in one entry would attract the principle of *noscitur a sociis*, which means that where the meaning of a particular word is of a wider import, the legislative intent should be ascertained by reference to adjoining words in connection with which the disputed word is used, for the simple reason, that such adjoining words lend their colour and meaning to the disputed word. Here it should be noted that the word is 'dyes'. It cannot be disputed that dyes are intermediary products and are utilised for various purposes. Encyclopaedia of Science and Technology by McGraw-Hill, Vol. IV, shows that there are twenty-two classes of dyes having different chemical structures. Each of

these twenty-two classes of dyes is based upon a peculiar chemical structure (vide page 337). It is, therefore, evident that 'dye' is not a basic chemical but it is an intermediary chemical product which can be utilised as such. When this word is used along with the word 'chemicals' and when the principle of *noscitur a sociis* is applied, it follows that the word 'chemicals', which is used in entry No. 4 of Schedule C is that chemical which can be used as an intermediary product and not as an 'end-product'. In *Scientific and Laboratories v. State of Gujrat* ([1974] 34 S.T.C. 418.) (S.T.R. No. 5 of 1973), which was decided by us on 21st June, 1974, the question arose whether 'glass ampules' were 'bottles' within the meaning of entry No. 6(vii) of Schedule C of the Act. The entry, which we considered while determining this question, was as under :

'6. (vii) Empty bottles and croks.'

Since we found that 'bottles' are used in collocation of the word 'corks', we applied the principle of *noscitur a sociis* and held that the use to the word 'corks' gave some meaning to the word 'bottles'. We do not find any reason why the same principle should not be invoked while considering entry No. 4 of Schedule C.

8. Shri Pathak drew our attention to a judgment given by a Division Bench of this Court in *State of Gujarat v. Jayant Chemical Works Pvt. Ltd.* ([1975] 36 S.T.C. 112.) (S.T.R. No. 10 of 1970 dated 22nd June, 1973). Our learned brother B. K. Mehta, J., speaking for the Bench, considered in that case this entry No. 4 of Schedule C, with reference to an article known as 'bentonite powder'. The contention of the revenue in that case was that bentonite powder was covered by the residuary entry No. 22 of Schedule E and not by entry No. 4 of Schedule C. This conten was rejected holding that bentonite powder was a chemical contemplated by entry No. 4 of Schedule C. We are of the opinion that this decision would be of no help to the petitioner in this reference because the facts of that case showed that bentonite powder was 'a native, colloidal, hydrated aluminium silicate' and was put to medical and industrial use; it was also used for preparation of industrial barrier creams and cosmetics. This court therefore came to the conclusion that the said powder was 'a substance obtained by a certain process and used for producing certain chemical effects in the industrial and

medical preparations'. These findings clearly show that in the opinion of this court, this powder was not an end-product but an intermediate product, and if that is so, obviously the said article would fall within the ambit of entry No. 4 of Schedule C even according to the view which we are taking in this reference.

9. Shri Pathak contended that in the above-referred case in *State of Gujarat v. Jayant Chemical Works Ltd.* ([1975] 36 S.T.C. 112.) (S.T.R. No. 10 of 1970) this court has not approved of applying the principle of *noscitur a sociis* to this entry No. 4 of Schedule C on the ground that this entry is a residuary entry so far as the dyes and chemicals are concerned. We do not find any justification for this submission, because, after perusing the said judgment, we find that the bentonite powder was held by the court to be a chemical, which would fall within entry No. 4 of Schedule C, and it was only for that reason that the court gave its decision that that powder was covered by entry No. 4. As a matter of fact, we do not propose to extend the principle of *noscitur a sociis* in support of the proposition that the chemicals referred to in the entry should be the chemicals of the type of which the dyes generally are. We apply the principle of *noscitur a sociis* to this entry only for a limited purpose of knowing the types of chemicals which are contemplated by the entry. Since we find that dye is an intermediate chemical product, which determines the nature of the wider work 'chemicals', we are of the opinion that the word 'chemicals' should take its meaning from the category of chemicals which a dye represents.

10. The contention of Shri Pathak amounts to saying that all end-products which utilise chemicals in their manufacture would be covered by entry No. 4 of Schedule C. If this contention is accepted, then it would follow that all end-products in the manufacture of which chemicals are used would fall within the ambit of this entry, provided there is no specific entry covering such product. This view would be patently wrong because that would render the mention of dyes in this entry quite redundant. As already pointed out by us, even a dye is an intermediary chemical product and if the word 'chemicals' is held to have been used in the most comprehensive sense covering all the three categories of chemicals, namely, basic chemicals, intermediary chemical products and end-products, then obviously the product known as dye would be covered by the wider category and there

would not have been any necessity of making a special mention of dye in this entry. It cannot be disputed that chemical is a wider term and since this wider term is used in collocation with a term of narrower meaning, namely, a dye, the said wider term must take its colour and meaning from the meaning which could be attributed to the narrower term.

11. Even otherwise, applying the well-known test supplied by the Supreme Court in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola* ([1961] 12 S.T.C. 286 (S.C.)), when a taxing statute does not give statutory meaning to a word, that word should be given its popular meaning, i.e., the meaning which is attributed to it in common parlance by people who daily deal with it as consumers or dealers in the market. This principle was further applied in *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh* ([1967] 19 S.T.C. 469 (S.C.)), wherein it was pointed out by their Lordships of the Supreme Court that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. This principle is reiterated by the Supreme Court in *Commissioner of Sales Tax v. S.N. Brothers* ([1973] 31 S.T.C. 302 (S.C.); A.I.R. 1973 S.C. 78). If therefore the meaning which could be attributed in the commercial sense to the word chemical or to the word insecticides is accepted as a safe basis, the question which would arise to be considered is whether if a consumer of the articles which are disputed in this case goes to the market and asks for a 'chemical' from a dealer of these articles in the market, would he be supplied any of these articles. Would he understand that by demanding the 'chemicals' he really wants to purchase Aldrex, Dieldrex or Endrex. Since these articles are germicides, they would not be known in the commercial world as mere 'chemicals', which would obviously represent a very wide category of articles. Therefore, even applying the principles supplied by the Supreme Court in *Ramanatar's case* ([1961] 12 S.T.C. 286 (S.C.)), it cannot be said that these three disputed articles fall within entry No. 4 of Schedule C.

12. In this connection, it would not be out of place to make a reference to the report of the Sales Tax Inquiry Committee 1957-58. The said report says about

'recommendation' in Chapter V thereof. In para 508, the report gives the following reasons for keeping a low rate of tax for certain articles which are used in the manufacture of finished goods. This says :

'Under our scheme of tax we have thought it fit to suggest that a tax at a sufficiently low rate should be charged on purchases made by manufacturers and processors of industrial raw materials, process material, etc., which do not have any considerable non-industrial use. The amount of such tax can be absorbed in the cost of manufacture. Where the goods required in the manufacture of goods cannot be conveniently dealt with in this manner, we suggest a system of tax-free purchase by 'recognised' dealers.'

These observations of the report show that basic materials as well as the intermediary materials have been intentionally taxed under the Act at a very low rate because they are expected to be utilised in the manufacture of finished articles and the amount of tax which is charged on such articles can be conveniently absorbed in the cost of manufacture. Entry No. 4 of Schedule C prescribes a low rate of tax, namely, the rate of 3 per cent. This particular aspect of the matter gives support to our view that this low rate of taxation is prescribed with regard to the dyes and chemicals in entry No. 4 only because these dyes and chemicals were supposed to be used in the manufacture of finished articles. In other words, dyes and chemicals which are referred to in this entry are the intermediary products.

13. Taking therefore all those facts and circumstances into consideration, we find that the Tribunal was right in taking a view that Aldrex, Dieldrex and Endrex are not the chemicals contemplated by entry No. 4 of Schedule C. Our answer to the question which is referred to us is, therefore, in the negative. This reference is accordingly disposed of and it is ordered that the applicant shall bear the costs of the opponent State in the reference.

14. Reference answered in the negative.