HIGH COURT OF GUJARAT *(D.B.)*

BARODA MUNI CORPORATION
V/S
HINDUSTAN CONDUCTORS (PVT) LIMITED

Date of Decision: 19 June 1978

Citation: 1978 LawSuit(Guj) 51

Hon'ble Judges: S H Sheth, M K Shah

Eq. Citations: 1979 (1) GLR 502

Case Type: First Appeal

Case No: 108 of 1972

Head Note:

[A] Baroda Municipal Corporation Octrio Rules - Sch.1, Entries Sch.60, Sch.120 - Corporation depending on a particulars entry for the purpose of levying octroi - On facts actually another entry applying - Tax levies cannot be determined on just one entry - If the corporation has power to levy octroi duty on an article it dies not make any difference if it is collected under a different entry [B] Baroda Municipal Corporation Octroi Rules - Sch.1, Entries 60,120 - Levy of Octroi duty on articles as they are and not on what is going to be manufactured out of it. [C] INTERPRETATION OF STATOTES - Making of subsequent Rule - They cannot ordinarily be taken into account to construe the original Rule.

If the Corporation has the power to levy Octroi duty under the Baroda Muni- cipal Corporation Octroi Rules under one entry on a particular commodity which is imported within its area and if it levies and collects it under a different entry it does not make any difference nor are such a levy and collection of octroi duty vitiated. The only grievance which the tax-payer can make may relate to the difference in rates if the rate under which the Corporation ought to have levied

the duty is lesser than the rate under which it has actually levied. (Para 7) Baroda Municipal Corporation Octroi Rules - Schedule I Entries 60 120 Levy of octroi duty on articles as they are and not on what is going to be manufactured out of them. The levy of a tax on a particular commodity cannot be determined with refer- ence to what is going to be made out of that commodity by applying to it a manu- facturing process. The test must be what those goods or commodities are and how they are known to the commercial world and the public at large. If aluminum rods and wires out of which electrical goods and appliances are manufactured are on that basis subjected to octroi duty it will in substance be not an octroi duty in aluminium rods and wires but an excise duty on the production of electrical goods and appliances. That will be clearly beyond the power and authority of the Cor- poration. (Para 8) So far as the construction of an entry is concerned what a witness says can never be final and conclusive. The court takes into account the character of the commodity as described by a witness and then draws its own inference as to whether such a commodity answers an entry under which it is subjected to tax. (Para 10) There is a distinction between an article and a ware. However what is a ware can be article but not vice versa. (Para 11). The basic principle is that when two or more words are used in a single expres- sion each one of them should bear the reflection of another. In other words they cannot be construed so independently of each other that what is foreign to one expression can be included in another. The expression article is indeed an expres- sion of very wide connotation. Anything and everything can be included therein. Even raw iron filings can also be included in the expression article. We do not propose to construe the expression article in such a wide manner. But certainly the meaning and connotation of the expression article are not and cannot be so narrow as the meaning and connotation of the expression ware are. Whereas the expression ware is a narrower concept the expression article is a wider concept. But its width however all embracing it may be cannot include something which is totally foreign to the expression ware. Now if the expression ware can include a finished product which would answer the description of a consumers goods in econo- mics the expression articlecan also include a husband product irrespective of whether they are used as consumers goods or producers goods. If some manufacturing pro- case has been applied to a raw material and if it has been rendered marketable in some manufactured form it is indeed an article wider in connotation than the expression ware The expression article is a general description which embraces within its sweep a number of articles bearing specific names. If a commodity has been described by its general name and if a

commodity bearing such description is not available in the market the test of how traders and businessmen understand them can hardly be applied. There is no doubt that the expression article includes within its sweep more than what the expression ware includes. Aluminium rods and wires though stated as neither articles nor wares can be ordinarily said to be aluminium articles firstly because they have undergone some manufacturing process and secondly because in that process they have become marketable. There- fore Entry 120 in the octroi Schedule of the Corporation will ordinarily attract the liability to pay octroi duty in respect of aluminium rods and mires. (Para 14) INTERPRETATION OF STATUTES- Making of subsequent Rules They cannot ordinarily be taken into account to construe the original Rule It is true that a subsequent legislation or rule cannot ordinarily be taken into account for the purpose of finding out the intention of the taxing authority when it made the original rule. But this rule has also its exception. If the rule-making authority tried to remove same mischief by amending the rules the court is entitled to find out what mischief the original rule-making authority tried to remove. There- fore though on a strict and technical construction the expression articles may be capable of including aluminium rods and wires the Corporation when it made the octroi rules never thought of levying octroi duty on aluminium rods and wires. Therefore they were not liable to be assessed for payment of octroi duty. (Para 15) Orient Paper Mills Ltd. v. Union of India. Prakash Cotton Mills Pvt. Ltd. & Ors. v. B. N. Rangwani & Ors. J. K. Steel Ltd. v. Union of India & Ors. N. B. Sanjana Asstt. Collector of General Excise & Ors. v. The Elphinstone Spg. & Wvg. Mills. Co. Ltd.4 Commissioner of Sales Tax U.P. v. S. N. Brothers. Spl.C.A. 1058 of 1972 decided on 15-1-1976 State of U.P. & Anr. v. M/s Kores (India) Ltd. Dunlop India v. Union of India & Ors. Union of India v. Gujarat Woollen Felt Mills Dr. Devendra M. Surti v. State of Gujarati referred to.

Final Decision: Appeal dismissed

Advocates: K S Nanavati, I M Nanavati, G N Desai, M D Pandya

Reference Cases:

Cases Cited in (+): **1**

Cases Referred in (+): **11**

Judgement Text:-

S H Sheth, J

[1] The first contention which has been raised by Mr. G. N. Desai on behalf of the plaintiff is that the Corporation is not entitled to rely upon Entry 120 in its octroi Schedule in justification of the levy which was made under Entry 60. The main line of argument which Mr. Desai has advanced before us is that levy and collection of a tax necessarily pre-suppose assessment and determination and that, therefore, they constitute a quasi-judicial act. According to him, a quasi-judicial act must be supported or justified only on the material on which the assessing or taxing authority acted and not on the basis of any fresh material placed by it before the Court. Therefore, according to Mr. Desai, having levied octroi duty on the said two commodities under Entry 60, it v/as not open to the Corporation to rely upon Entry 120 in this suit in order to justify what it did. In support of his proposition, he has relied upon a few decisions. In Orient Paper Mills Ltd. v. Union of India, AIR 1970 S.C. 1498 upon which he has placed reliance, the principle which has been laid down is that the assessing authorities exercise quasi-judicial functions and that they have a duty cast upon them to act in a judicial and independent manner. When' assessment is made by the Deputy Superintendent or the Assistant Collector, the Collector, to whom an appeal lies against his order' of assessment cannot control or fetter bis judgment in the matter of assessment. If the Collector issues directions by which the Deputy Superintendent or the Assistant Collector is bound, no room is left for the exercise of his own independent judgment. It has been further laid down in that case that the appeal in such a case becomes an empty formality. Therefore, such a direction given by the Collector is invalid and the proceedings before the Deputy Superintendent or the Assistant Collector finalized in pursuance of such a direction are vitiated. The principle was laid down in the context of an appellate authority issuing directions to the authority of first instance. The only principle which can be deduced from this decision is that an appellate authority to whom an appeal lies cannot control the power conferred upon the authority of first instance by issuing administrative directions because, if it is so done, then appeal against the decision of the authority of first instance becomes an empty formality because the authority of the first instance has followed the administrative directions issued by the appellate authority. Such a situation negatives and in substance destroys the right to appeal conferred by the statute upon the aggrieved party.

[2] He has next relied upon the decision of the High Court of Bombay mPrakash Cotton Mills Private Ltd. and others v. B. N. Rangwani and others, AIR 1971 Bom. 386. In the

context of Central Excise Rules, it has been laid down by a Division Bench of the High Court at Bombay that enquiries under Rule 9 (2) of the Central Excise Rules are quasi-judicial in character and must abide by the rules of natural justice. It has been further observed that the assessee must be informed of the charges with full details of the evidence in support of them and given an opportunity to meet those charges. It has also been observed by the High Court at Bombay that demand notice issued to the assessee without giving him a proper opportunity is invalid. In reply to the argument raised by Mr, Desai, Mr. Nanavaty has cited two decisions. The first decision is J K. Steel Ltd. v. Union of India and others, AIR 1970 S.C. 1173. It was also a case under the Central Excises and Salt Act. In a matter of excise duty and its collection, the Supreme Court has laid down the principle that if the exercise of a power can be traced to a legitimate source, the fact that it was exercised under a different section or entry does not vitiate it. In the subsequent decision in N. B. Sanjana, Assistant Collector of Central Excise, Bombay and others v. The Elphinstone Spinning and Weaving Mills Co. Ltd., A.I.R. 1971 S. C. 2039, the Supreme Court has referred with approval to the principle laid down in the earlier decision.

[3] The question whether the levy and collection of octroi duty is an administrative act or a quasi-judicial act does not strictly arise in the instant case. The only short question which arises in the facts and circumstances of this case is whether it was open to the Corporation to justify in the Court on the basis of a different entry the levy and collection of octroi duty which it made under a particular entry. We see no disability on the part of the Corporation to do so. If the Corporation has the power to levy octroi duty under one entry on a particular commodity which is imported within its area and if it levies and collects it under a different entry, it does not make any difference nor are such a levy and collection of octroi duty vitiated. The only grievance which the tax-payer can make may relate to the difference in rate if the rate under which the Corporation ought to have levied (he duty is lesser than the rate under which it has actually levied. We are, therefore, of the opinion that the first contention which has been raised on behalf of the plaintiff in order to support the decree passed in their favour is without any substance and must be rejected.

[4] The second contention which has been raised by Mr. Nanavaty on behalf of the Corporation is that Entry 120 in the octroi Schedule of the Corporation authorizes the levy and collection of octroi duty on aluminium rods and wires and that, therefore, according to him, the claim made by the plaintiff is not sustainable. We may note that Mr. Nanavaty made no serious attempt to justify the levy of octroi duty on these two

commodities under Entry 60 and, in our opinion, he rightly did EO. Entry 60 subjects to octroi duty "Electric goods and appliances". By no stretch of imagination aluminium rods and wires by themselves can be said to be electrical goods and appliances. The evidence shows that the plaintiff has been manufacturing electrical goods and appliances by using ahi.riinium rods and wires as raw materials. It appears that was what weighed with the Corporation in levying octroi duty on aluminium rods and wires under Entry 60. Entry 60 can never justify levy of octroi duty on aluminium rods and wires for two reasons. Firstly aluminium rods and wires by themselves are not electrical goods or appliances to which Entry 60 relates. Secondly aluminium rods and wires imported by the plaintiff change their character altogether and are transformed into an altogether new commodity when electrical goods and appliances have been manufactured out of them. It is this transformation in the process of manufacture which makes the difference. Can we or any one by any stretch of imagination say that aluminium rods and wires are electrical goods and appliances ? The answer from any point of view to the question must be in the negative. The levy of a tax on a particular commodity cannot be determined with reference to what is going to be made out of that commodity by applying to it a manufacturing process. The test must be what those goods or commodities are and how they are known to the commercial world and the public at large. If aluminium rods and wires out of which electrical goods and appliances are manufactured are on that basis subjected to octroi duty, it will in substance be not an octroi duty on aluminium rods and wires but an excise duty on the production of electrical goods and appliances. That will be clearly beyond the power and authority of the Corporation. Therefore, the learned trial Judge was eminently justified in ruling out the contention that aluminium rods and wires could be subjected to payment of octroi duty on the ground that they were used as raw materials for manufacturing electrical goods and appliances.

[5] We may now turn to Entry 120 in the octroi Schedule.

"Metal :-Except iron, gerraan silver, silver, stainless steel, lead and nickel :-

(a) Arlicles arid ware

(b) Sheets

(c) Broken pieces

(d) Amalgamation of metals and wares thereof."

It has been conceded by Mr. Nanavaty, in our opinion he has rightly done so, that aluminium rods and wires cannot be sheets, broken pieces or "amlagamation of metals and wares thereof. There is no doubt about the fact that metal within the meaning of Entry 120 will include aluminium. None of the exceptions applies to aluminium. In this context Mr. Nanavaty has relied upon the expression "Articles and ware". Are aluminium rods and wires aluminum articles and wares ? Mr. Desai has tried to argue that the Corporation has used in singular the expression "ware" and has not used it in plural. In our opinion, it makes no difference whatsoever. Before we examine the applicability of Entry 120, it is necessary to refer to the evidence in order to find out what is the character of these commodities.

[6] Vithalbhai Harmanbhai Patel who has been examined as the plaintiff's witness and whose deposition appears at Ex. 40 has stated in his evidence that the aluminium rods which were imported by the plaintiff were in coiled form-each coil approximately weighing 1 to 11 tonnes. The rods which were imported were round. The circumference would be 3/8". They would appear like thick wires. From those rods aluminium wires of different gauges were drawn according to the plaintiff's requirement. The plaintiffs were selling those wires to Electricity Board and other customers for transmission of power. He has also relied upon the evidence of Babubhai Nitvarlal Shah who has been examined as defendant's witness and whose deposition appears at Ex. 47. In his deposition he has stated that aluminium rods and wires are neither articles nor wares. Mr. Desai has very heavily relied upon this part of the deposition of the defendant's witness and has argued that within the meaning of Entry 120 aluminium rods and wires are neither articles nor ware. So far as the construction of an entry is concerned, what a witness says can never be final and conclusive. The Court takes into account the character of the commodity as described by a witness and then draws its own inference as to whether such a commodity answers an entry under which it is subjected to tax. In our opinion, Mr. Desai was not justified in placing very heavy reliance upon what the sole witness, examined by the defendant Corporation, says. Bearing in mind the description of the commodity which defendant's witness has given, we proceed to examine the arguments which the Mr. Desai has raised.

[7] The first argument which Mr. Desai has raised bears upon the principle of construction. According to him, two words or two expressions used in the company of each other must take their colour from each other. In other words, one of the two expressions cannot be given a meaning or a connotation which is much wider than the meaning and connotation of another term and which is not warranted upon the construction of the Entry. He has rightly pointed out to us that while constructing the expressions used in the context of levying taxes upon commodities, the test which the have to bear in mind is what people in trade and commerce conversant with the subject generally understand by them in usual course. Let us now first see what the expression "ware" means. A "ware" is a finished product. An "article" other than a "ware", though it may be a finished product, we have no doubt in our mind, is wider in connotation than the expression "ware". Mr. Desai has emphatically argued that the expression "article" must bear the connotation which is consistent with the connotation of the expression "ware". In our opinion, this primary submission made by Mr. Desai is well-founded. However, we must bear in mind that we cannot assign to the expression "articles" the same meaning and connotation which the expression "ware" bears. If we do so, we will be guilty of re-writing the entry and reducing two expressions to one. That cannot be done. Now, if a "ware" is a finished product, what is an "article" ? It appears to us that a "ware" may be an "article" but it cannot be vice versa. According to Mr. Desai, rods and wires are not finished products and, therefore, they are not "wares". Proceeding further, he has argued that if they are not "wares", they cannot be "articles". The first part of the submission which Mr. Desai has made is well-founded but we are unable to uphold the second part of his submission. There is a distinction between an "article" and a "ware". However, what is a "ware" can be an "article". In order to point out to us the limit to which the meaning and connotation of the expression "article" in the context of the meaning and connotation of the expression "ware" can be stretched he has invited our attention to a few decisions. In Commissioner of Sales Tax, U. P. v. S. N. Brothers, 31 Sales Tax Cases 302, the Supreme Court was considering the Entry "dyes and colours and compositions thereof used in U.P. Sales Tax Act (15 of 1948). The question which arose before the Supreme Court was whether the expression "colour" used in the company of the expression "dyes" could include a food colour. The Supreme Court answered Ihe question in the negative. The second question which the Supreme Court considered in that very decision was whether the expression "scents and perfumes" used in the same U. P. Sales Tax Act would include syrup essence. That question was also answered by the Supreme Court in the negative. It appears to us that a "food colour" in the context of the expression "dyes and colours" brings into picture a

completely foreign element. Dyes have nothing to do with food, while a colour can be a food colour or any other colour. Therefore, the expression 'colours" used in the company of the expression "dyes" was held to be exclusive of food colour. Similar reasoning was also applied to the construction of another entry - "scents and perfumes." The syrup essence may be a perfume. It is difficult to think that it can be a scent. Therefore, syrup essence was held to have been excluded from the amplitude of the expression "scents and perfumes."

[8] He has next relied up in ai unreported decision of this Court in Special Civil Application No. 1058 of 1972 decided on 15th January 1976 by a Division Bench of this Court of which I was a member. It was a case of a blended yarn. We do not think any support can be obtained from that decision for the proposition which Mr. Desai has canvassed before us.

[9] The next decision upon which he has relied is in Slate of Uttar Pradesh and another v. M/s Kores (India) Ltd., AIR 1977 S.C. 132. The question which arose in that decision was whether carbon paper was paper covered by the expression "paper other than hand paper" used in U. P. Sales Tax Act. The principle which the Supreme Court laid down was that since the word "paper" was not defined either in the U.P. Sales Tax Act or the Rules made thereunder, it had to be construed in the sense in which persons dealing in and using the article understand it. It has been further observed in that decision that the mere fact that the word 'paper' forms part of the denomination of a specialised article is not decisive of the question whether the article is paper as generally understood. The word ' 'pipes" in the common parlance or in the commercial sense means paper which is used for printing, writing or packing purposes. So held the Supreme Court. In Duniop India Ltd. v. Union of India and others, AIR 1977 S C. 597, the question which arose was whether V.P. Latex was a kind of synthetic resin and was liable to a countervailing duty under the Central Excises and Salt Act. The Supreme Court held that no reasonable person would come to the conclusion that V.P. Latex would not fall under rubber raw as contended by the assessee in that appeal. The next decision upon which reliance has been placed is in Union of India and others v. Gujarat Woollen Felt Mills, A.I.R. 1977 S.C. 1548. In the context of the Central Excises and Salt Act, 1944 the question which arose in that case was whether non-woven fells, manufactured from woollen fabrics by machine pressing of raw wool which was neither sheets nor fabrics and utilised for the purpose of filtration in heavy industries were not "woollen fabrics" within the meaning of Entry 21 in Sch. I to the Act. In that Context the principle which the Supreme Court has laid down is that while interpreting such statutes

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 the commercial sens; Reference has also been made to the decision of the Supreme Court in Dr. Devendra M. Surti v. The State of Gujarat, A.I.R. 1969 S.C. 63. The question which arose in that case was whether private dispensary of a doctor was a 'Commercial Establishment' within the meaning of the Bombay Shops and Establishments Act, 1948. The Supreme Court laid down in that case that a private dispensary of a doctor is not a 'Commercial Establishment' within the meaning of that Act. In that connection the Supreme Court has observed that while construing such expressions, the principle of noscitur a sociis should be applied. It has also been observed that presence of a profit motive or the investment of capital tradition associated with the notion of trade and commerce cannot be given an undue importance in construing the definition of 'Commercial Establishment' used in the said Act. The correct test according to the Supreme Court of finding out whether a professional activity falls within sec. 2 (4) of the said Act is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community or any part of the community with the help of employees in the matter of a trade or business in such an undertaking. It has also been pointed out that a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction between a professional activity and an activity of a commercial character and unless the profession carried on by a person also partakes of the character of a commercial nature, he cannot fall within the ambit of sec. 2 (4) of the Act. These are the decisions to which reference has been made by Mr. Desai.

[10] Bearing these principles in mind we may state that the last mentioned decision of the Supreme Court has hardly any relevance to the facts of the present case. The basic principle which we deduce from the decisions referred to above is that when two or more words are used in a single expression, each one of them should bear the reflection of another. In other words, they cannot be construed so independently of each other that what is foreign to one expression can be included in another. As for example, the element of edibility is completely foreign to the expression "dyes" and therefore the expression "colour" cannot be construed in such a wide manner as to include 'food colour' or edible colours because such a construction of the expression 'colour' would be completely repugnant to the connotation and meaning of the expression 'dyes' in whose company it has been used. Similar reasoning applies to the construction of the expression 'syrups and perfumes'. What Mr. Desai has pointed out to us is that since

'ware' is a completely finished product which is sold to a consumer for direct use, the connotation and meaning of the expression 'article' must also be confined accordingly, la other words, according to him, the expression 'article' used in the company of the expression 'ware' means and connotes a finished product which can be sold to a consumer for direct use. If we put it in the language of economics, since a "ware" is a "consumer's goods", the "article" can only be a "consumer's goods" and cannot be a "producer's goods." Indeed a producer also consumes the producer's goods when he uses it for the purpose of manufacturing an altogether new product but such a use does not impart to the producer's goods the character of consumer's goods. The expression "article" is indeed an expression of very wide connotation. Anything and everything can be included therein. Even raw iron filings can also be included in the expression "article". We do not propose to construe the expression "article" in such a wide manner. But certainly the meaning and connotation of the expression "article" are not and cannot be so narrow as the meaning and connotation of the expression "ware" are. Whereas the expression "ware" is a narrower concept the expression "article" is a wider concept. But its width, however all embracing it may be, cannot include something which is totally foreign to the expression "ware". Now if the expression "wire" can include a finished product which would answer the description of a consumer's goods in economics, the expression "article" can also include a finished product irrespective of weather they are used as consumer's goods or producer's goods, If some manufacturing process has been applied to a raw material and f it has been made marketable in some manufactured form, it is, our opinion, indeed an "article" wider in connotation than the expression "ware". The test of what the commercial world thinks of cannot be applied to the instant case because there is nothing like an "aluminium article" which is sold in the market. The expression "article" is a general description which embraces within its sweep a number of articles bearing specific names. If a commodity has bean described by its general name and if a commodity bearing such description is not available in the market, the test of how traders and businessmen understand them can hardly be applied. We have no doubt in our minds that the expression "article" includes within its sweep more than what the expression "ware" includes, Aluminium rods and wires, though it has been stated by the defendant-Corporation's witness as neither 'articles' nor 'ware', can be ordinarily said to be aluminium articles firstly because they have undergone some manufacturing process and secondly because, in that process, they have become marketable. Therefore, Entry 120 in the octroi Schedule the Corporation will ordinarily attract the liability to pay octroi duty in respect of aluminium rods and wires. However, the further question which has been raised is whether the Corporation ever resolved when it made the octroi Schedule, to tax these commodities.

[11] On 15th January 1959 the Corporation amended Entry 54 in its octroi Schedule. Originally Entry 54 specified "cream". It was modified and was replaced by the entry bearing the same number and specifying "copper wire, aluminium wire and rods and copper strips." This specification of 'aluminium rods and wires' was not brought in by amending Entry 120. Entry 54 which specified "cream" was bodily amended and replaced by an altogether different entry. It is clear therefore that by amending Entry 54 the Corporation wanted to remove the mischief which the original octroi Schedule contained. If Entry 120 was intended to include aluminium wires and rods, there was no need for the Corporation to bodily amend Entry 54. This subsequent amendment clearly shows that when the Corporation made octroi Rules with the Schedule annexed to it, it never resolved to levy octroi duty on aluminium wires and rods. It is true that a subsequent legislation or rule cannot ordinarily be taken into account for the purpose of finding out the intention of the taxing authority when it made the original rule. But this rule has also its exceptions. If the rule-making authority tried to remove some mischief by amending the rules, the Court is entitled to find out what mischief the original rules had which the rulemaking authority tried to remove. In our opinion, therefore, though on a strict and technical construction the expression "articles" may be capable of including aluminium rods and wires, the Corporation when it made the octroi rules never thought of levying octroi duty on aluminium rods and wires. Therefore, in our opinion, they were not liable to be assessed for payment of octroi duty.

[12] For the reasons which we have stated in this judgment and not for the reasons stated by the learned trial Judge, we confirm the finding recorded by the learned trial Judge in this behalf and reject the contention raised by Mr. Nanavaty on behalf of the Corporation.

[The rest of the judgment is not material for the reports]

Appeal dismissed.