Oswal Agro Mills Ltd.

Vs

Collector of Central Excise and others

Civil Appeal No. 2702 of 1984

(K. Ramaswamy, R. M. Sahai JJ)

27.04.1993

JUDGEMENT

K. RAMASWAMY, J.:-

1. Common questions of law arose for decision in these 8 appeals need disposal by this judgment. The question relates to classification of "toilet soap" in Excise Item 15 of the First Schedule to the Central Excises and Salt Act 1 of 1944 as amended in 1964 for short 'the Act'. In addition, in C.A. Nos. 813/86, 3632-34/88 and 1102/89 sequal to its finding, they claim refund of excess excise duty. The facts in C. A. Nos. 2702/84 and 2785/84 are sufficient for disposal. The appellants laid before Assistant Collector classification list claiming "toilet soaps" Kalpa and Oasis, in other appeals Jai, O.K., Moti, Rain Drop, Gold and Ria as bath soaps under Tariff Item 15(1) of the First Schedule (Household). By notice date August 31, -1982, the Assistant Collector called upon the appellants to show cause as to why they cannot be classified under Tariff Item 15(2) 'other sorts' and to levy excise duty at 15 per cent ad valorem (as then stood). The appellants after filing their reply thereto and having had personal hearing, by proceeding dated November 27, 1982, the Asstt. Collector classified toilet soaps as "other sorts under Tariff Item 15(2) of the Schedule. On appeal the Collector by Order dated January 21, 1983 classified them under Tariff Item No. 15(1) "household". On second appeal, the CEGAT by its order dated June 20, 1984 reversed the appellate order and upheld the Assistant Collector's order. Same is the case with regard to all other appeals except resultant claim for refund. In 1954 Tariff Item No. 15A was introduced in the First Schedule of the Act thus:

" 15(A) 'Soap' means all varieties of the product known commercially as soap -

I. Soap, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or of steam for heating:-

(1) Soap, household and laundry:-

(a) Plain bars of not less than one pound in weight Rupees five & annas four per cwt.

(b) other sorts Rupees six & annas two per cwt.

(2) Soap toilet Rupees fourteen per cwt.

(3) Soap, other than household and laundry or toilet. Rupees fourteen per cwt.

This entry as amended in 1964 reads thus:

" 15. 'Soap' means all varieties of product known commercially as soap -

(1) Soap, household and laundry 20 per cent ad valorem

(2) Other sorts 20 per cent ad valorem

(Ad valorem rate of tariff varies from time to time as per amendments).

Later it was amended in the year 1979 empowering the Govt. to grant exemption under Section 8 of the Act. The details thereof are not material for the purpose of these cases. It is seen that in 1954 in Tariff entry 15A "soap" means all varieties of the product known commercially as soap. Item I provided that soap in relation to its manufacture with the aid of power or of steam for heating, they were classified as Plain bars, other sorts, toilet soaps and soap, other than household or laundry or toilet. While amending the entry in 1964 the language couched therein as seen earlier is thus: 'soap' means all varieties of products known commercially as soap.

(1) Soap, household and Laundry.

(2) "Other sorts" and graded ad valorem tariff has been prescribed. It is seen that household and laundry soap was subjected to levy of tariff at a lesser rate than "other sorts" ad valorem. The contention of Sri Ganguli, the learned Senior counsel for the Union is that statute always kept distinction between soap "household and laundry" and "other sorts". Toilet soap was kept in the packet of other sorts. Household and laundry soaps are being used for cleaning household articles and utensils and washing the clothes while toilet soaps are for bathing purpose. The latter compose of diverse varieties, based on personal liking and taste, are being used. They are commercially known as other sorts but not household. The legislative history furnishes unimpeachable evidence that soaps used for household and laundary are compendiously treated as a class and are subjected to imposition of lesser tariff. They receive their colour from each other as compendiously known in the commercial parlance that the former are meant for use for household purposes while toilet soap are for use for bath and are subject to higher rate of tariff at par with soap for commercial and industrial purposes. They bear higher rate of tariff. The explanatory note appended to the Finance Bill 1964 would furnish the legislative intendment to amend the tariff item and the treatment meted out to toilet soap for tariff purpose. It is accordingly understood by the department and also by the trade circles. The appellants too initially treated toilet soap as other sorts but later, on legal opinion, they claimed them as household soaps. The construction adopted by the tribunal is consistent with the standard works on soaps. M/s. Harish Salve and Ashok Desai, contended that in 1954 toilet soap was treated as an independent tariff sub-item and household and laundry soaps were treated as separate entity and separately subjected to varied rates of tariff. On amendment in 1964 toilet soap was omitted as a separate entity and brought toilet soap as part of genus, namely, soap "household", as toilet soap is always a household soap. Therefore, the reliance by revenue on varied rates of duty or departmental contemporenia expositio have no bearing. The object of classification does not show that toilet soap is not part of the genus, "soap household" unless it is established otherwise.

2. The question, therefore, emerges whether "toilet soap" would be household soap within the meaning of Tariff item 15(1) of the Schedule. Undoubtedly true, as contended by Sri Ganguli, that preceding amendment toilet soap was classified separately under sub item 2 and assessed to duty accordingly. But by amendment the distinction was wiped out and toilet soap was brought into common hotchpotch. So the contention that the variety of products known commercially as soaps have been enumerated or included compediously, retaining their original colour even after the amendment made in the Finance Act, 1964 and falls into "other sorts" same genus, prima facie, though attractive, on consideration from proper perspective and in its setting in common commercial parlance,. soap "toilet" appears to fall in household in sub-item 1of tariff item 15 of the Schedule. It is true that the heading "soaps" are commercially known to be of diverse variety.

3. The provisions of the Tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor anything can we delete but it should be interpreted a on trued as per the words the legislature has chosen to employ in the Act or Rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statute. The contention that toilet soap is commercially different from household and laundry soaps, as could be seen from the opening words of entry 15, needs careful analysis. It is well, at the outset, to guard against confusion between the meaning and the legal effect of an expression used in a statute. Where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. Let us, therefore, consider the meaning of the word soap "household". The word household signifies a family living together. In the simplistic language toilet soap being used by the family as household soap is too simplification to reach a conclusion. Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, Court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. In Manmohan Das v. Bishun Das, AIR 1967 SC 643 a Constitution bench held as follows (para 6):

> "The ordinary rule of construction of the provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent manifest intention of the legislature from being carried out.".

4. In Ramavatar Budhaiprasad v. Asstt. Sales Tax Officer, Akola, (1962) 1 SCR 279: (AIR 1961 SC 1325), another Constitution Bench was to consider whether "betel leaves" are vegetable" within the meaning of item 6 of the II Schedule to the M.P. Sales Tax Act. It was contended that betel leaves are vegetable and, therefore, they are exempted from the payment of sales tax. While construing item 6, this Court held that the words must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It is to be construed as understood in common language. Therefore, betel leaves were held to be not vegetable. The term 'vegetables' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table. The same view was reiterated in Motipur Zamindari Co. (Pvt.) Ltd. v. State of Bihar, 1962 Supp (1) SCR 498: (AIR 1962 SC 660) and State of West Bengal v. Washi Ahmed, (1977) 3 SCR 149 : (AIR 1977 SC 1638). In Washi Ahmed's case green ginger was held to be vegetable within the meaning of the word used in common parlance. In Motipur Zamindari's case it was held that sugarcane was not vegetable. In Porritts & Spencer (Asia) Ltd. v. State of Haryana, (1979) 1 SCR 545 : (AIR 1979 SC 300), this Court held that 'Dryer felts' are not textiles, In that context the principle of understanding the meaning of the word in common parlance was adopted. In Indo International Industries v. Commr. of Sales Tax, U.P., (1981) 3 SCR 294 at p. 297C: (AIR 1981 SC 1079 at p. 1081, para 4), this Court held that "it is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to "the scientific and technical" meaning of the terms or expression used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. (emphasis supplied) If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. In that case the clinical syringes manufactured and sold by the assessee were not considered as 'glassware' falling within entry 39 of the, First Schedule of the Act. In commercial sense glassware would never comprise of articles like clinical syringes etc., or specialised significance and Utility. Same view was reiterated in P.A. Thillai Chidambara Nadar v. Addl. Appellate Asstt. Commissioner, Madurai, (1985) 4 SCC 30 : (AIR 1985 SC 1644) that coconut is neither a fresh fruit nor a vegetable. In Khandelwal Metal Works v. Union of India, (1985) Supp I SCR 750 at 774 B-C: (AIR 1985 SC 1211 at p. 1222, para 37), this Court held that Court cannot decide classification of goods under Import Tariff by implication. If rules of interpretation are made in the Act, they should be applied and interpretation would be made with their aid for classification. The Court held that brass scrap is not metal alloy. Craies on Statute Law (7th Edition) at page 164 specified one of the Rules of Interpretation of Statutes as extracted below:

> "The second Rule is that if the statute is passed with reference to a particular trade, business or transaction and, words are used therein which everybody conversent with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning".

5. In Shri Bharuch Coconut Trading Co. v. Municipal Corporation of the City of Ahmedabad, 1992 Supp (1) SCC 298: (AIR 1991 SC 494), this Court applied the test as "would a householder when asked to bring some fresh fruits or some vegetable for the evening meal, bring coconut too as vegetable? Obviously the answer is in the negative". Again when a person goes to a commercial market ask for coconuts, "no one will consider brown coconut to be vegetable or fresh fruit, no householder would purchase it as a fruit. Therefore, the meaning of the word brown coconut,

whether it is a green fruit has to be understood in its ordinary commercial parlance". Accordingly it was held that brown coconut was not green fruit. In interpreting the statute the individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Legislature is to be put aside. In Hansraj Gordhan Das v. H. H. Dave, Asstt. Collector of Central Excise & Customs, (1969) 2 SCR 253 : (AIR 1970 SC 755), this Court held that the operation of the statutory notification had to be judged not by the object which authority had in mind but by the words it had employed to effectuate the legislative interest. The question whether the cotton textiles manufactured by handlooms are entitled to exemption, this court held to be positive. It may be noted that marketability of the product is an essential facet to attract dutiability of the goods under the Act. The general purpose or common use of the product though may not be conclusive but may be relevant to classify it in a tariff entry when it was not specifically enumerated in a particular entry or sub-entry. The construction of the word must yield in favour of promoting and effectuating the object and purpose of the Act. In Dunlop India Ltd. v. Union of India, (1976) 2 SCR 98: (AIR 1977 SC 597), this Court found the entry not in residuary but placed in the parentage and relieved it from orphanage. In Anant B. Timbodia v. Union of India, 1992 (1) Scale 527: (AIR 1992 SC 1272), this Court was to consider whether imported cloves fell with Item 169 in List 8 of Appendix 6 or Para 167 of Chapter 8 of import and export policy 1990-93. Para 167 of Chapter 8 of import policy clearly provided the heading - Import of spices includes cloves, cinnamon/ cassia, nutmeg and mace. Therefore, it was held that import permit is necessary. The doctrine of popular sense or trade or its use in making medicine as crude drug was not accepted. Dictionary meaning or meaning given in Indian Pharmaceutical Codex was not accepted as given in view of specific enumeration. In Superintendent of Central Excise, Surat v. Vac Metal Corporation Ltd., AIR 1986 SC 1167, when the revenue contended that metalised yarn fell within general Tariff Entry 18 "yarn and synthetic fibres", this Court held that Entry 15A(2) First Schedule of Central Excises & Salt Act's specific entry relating to articles made of plastics of "all sorts" and metalised yarn wax exigible to lesser tariff duty. In Spaco Carburettors (India) Ltd. v. Collector of Customs, Bombay, (1988) 3 SCR 37, whether special purpose complex machine tool fell in entry 84-89 or 84,45/48, this court held, after taking into account the purpose and use of it, that it is a multi-purpose machine tool and. fell in Item 84, 45/48 of 1st Schedule.

6. The contention of the Revenue which finds favour with the Tribunal that the legislative history and memorandum appended to the Finance Bill would furnish aid to the construction of the word "household" soap is not apposite to the fact situation. When there is ambiguity in the word, statement and objects the legislative history, the memorandum appended to the Bill and the speech of the mover of the Bill are relevant material to discover the intention of the legislature. In Shashikant Laxman Kale v. Union of India, (1990) 4 SCC 366 at p. 376, para 17: (AIR 1990 SC 2114 at P. 2119, para 16), this Court held that "for determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was made, the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady can be used for the limited purpose of appreciating the background and the antecedant state of affairs leading to the legislation. The memorandum explaining the provisions in the Finance Bill which Were not part of the 'Notes on Clauses' appended to the Statement of Objects and Reasons of the Bill cannot be used to draw support therefrom as it is not an accurate guide of the final Act. In that behalf this Court relied on the statement of law propounded by Francis Bennion in his Statutory Interpretation, Second Edition, 1984 at p. 529 relied on by the appellants in this case too, In Ajoy Kumar Bannerjee v. Union of India, (1984) 3 SCC 127 : (AIR 1984 SC 1130), relied on by Sri Ganguli in this behalf renders no assistance to the Revenue. Therein the question was the object of delegated legislation. Therein the

memorandum appended to the Bill incorporating Sec. 16 of the General Insurance Business (Nationalisation) Act, 1972 was considered in the context of fixation of the pay scales of the employees. The doctrine of reading down, placing reliance on Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa, (1987) 3 SCC 279 : (AIR 1987 SC 1454), also is of no assistance to the Revenue. The doctrine of reading down has been applied only to sustain the constitutionality of the statute which question is not before us. There is no quarrel with the proposition that in ascertaining the meaning of the word or a clause or sentence in the statute in its interpretation, everything which is logically relevant should be admissible. It is no doubt true that the doctrine of Noscitur A Sociis, meaning thereby, that it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them i.e. when two or more words which are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general is restricted to a sense analogous to a less general. The philosophy behind it is that the meaning of the doubtful words may be ascertained by reference to the meaning of words associated with it. This doctrine is broader than the doctrine of ejusdem generis. This doctrine was accepted by this Court in catena of cases but its application is to be made to the context and the setting in which the words came to be used or associated in the statute or the statutory rule. Equally the doctrine of contemporanea expositio is also being invoked to cull out the intendment by removing ambiguity in its understanding of the statute by the executive. This Court (sic) in a latest case Mitra Prakashan Pvt. Ltd. v. Collector of Customs, 1991 (51) ELT 111 (115, para 15) cited all the decisions up-to-date and applied the doctrine to the understanding by the revenue of the provisions in Income-tax Act. In Desh Bandhu Gupta v. Delhi Stock Exchange, (1979) 3 SCR 373 (AIR 1979 SC 1049), this Court held that this principle can be invoked, though the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly pursuasive. We may also add that if the .interpretation is erroneous, court would without hesitation refuse to follow such construction. This Court also equally expressed the view that its application was in restricted sense to ancient legislation in J. K. Cotton Spinning and Weaving Mills Ltd. v. Union of India, 1987 Supp SCC 350; (AIR 1988 SC 191) and in Doypack Systems Pvt. Ltd. case, (1988) 2 SCR 962 at p. 1000 F to H: (AIR 1988 SC 782 at pp. 801-802, para 60). In State of Madhya Pradesh v. M/s. G. S. Dall and Flour Mills, (1992) Supp I SCC 150 at p. 153, para 18: (AIR 1991 SC 772, paras 14, 18 & 19), this Court doubted the application of the doctrine of contemporanea expositio as given to the construction or its applicability to a recent statute that too in the first few years of its enforcement. In this case also the question whether toilet soap is a household soap had arisen within a short period after the Amendment Act, 1964 came into force. Therefore, the understanding by the executive and its interpretation in bringing toilet soap in sub-item (2) "other sorts" instead of Item I "household" being of formative period of statutory operation the doctrine became inapplicable.

7. The ratio in Indo Metal case, therefore, is inapplicable. As rightly contended by Sri Ganguli that the doctrine of placement of a particular goods in a particular tariff item or residuary i.e. parentage or orphanage i.e. in placement of toilet soaps in either sub-items is not attracted to the facts as it is not a case of residuary items but of sub-classification within the same item.

8. Thus considered in the legal setting and commercial parlance we are of the considered view that "toilet soap" being of everyday household use for the purpose of the bath and having removed its separate identity which it enjoyed preceding amendment and having been not specifically included in "other sorts", it took its shelter in commercial parlance under "household". As stated if anybody goes to the market and asks for toilet soap he must ask only for household bathing purpose and not

for industrial or other sorts. Even the people dealing with it would supply it only for household purpose. It may be true that household consists of soap used for cleaning utensils, laundry used for cleaning soiled clothes and soap toilet is used for bathing but household is compendiously used, toilet soap is used only by the family for bathing purpose. Individual preference or choice or taste of a particular soap for bath is not relevant. The soap "toilet" would, therefore fall within the meaning the word of "household" in sub-item (1) of Item 15 of the Schedule. The classification shall accordingly be adopted. The appeals are accordingly allowed. The cases are remitted to the primary authority to deal with the matters accordingly. We do not propose to go into the question of refund as it is a matter to be dealt with by the authorities concerned in accordance with the law. The appellants shall have to apply for refund and the authorities shall be required to deal with it in accordance with law. It is for the authority, therefore, to decide the question as per law. In the circumstances parties are directed to bear their own costs. Appeals allowed.

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