

T.V.L. Nilsin Industries etc.

Vs

State of Tamil Nadu

(S.P.Bharucha, V.N.Khare JJ)

28.07.1997

JUDGMENT

1. These appeals, filed by assesses, challenge the correctness of the judgment and order of a Division Bench of the High Court at Madras. The question raised in these appeals is whether ultramarine blue is a pigment, so that it falls under Item 110 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, as contended by the Sales Tax authorities, or a chemical, so that it falls under Item 138 thereof, as contended by the assesses. The High Court referred to decisions of other High Courts and came to the conclusion that the stand of the Sales Tax authorities was justified.

110. Paints, colours, dry distempers, At the Point 10 varnishes and blacks cellulose lacquers, of the first sale polish including metal polishing bars in the state. (but not boot polish), pigments, indigo, enamels, cement. based waterpaints, oilbound distemper, water pigments finishes for leather, plastic emulsion paints, turpentine oil, bale oil, white oil and thinners. Item 138 covers dyes and chemicals not otherwise specified in the Schedule.

2. Our attention was invited by learned counsel for the assesses to the judgments of the Madhya Pradesh, Rajasthan and Gujarat High Court and we now refer to them seriatim.

3. In N. Ganu Bhai vs. Commissioner of Sales Tax, Madhya Pradesh, 36 S.T.C. 421, the dispute was whether ultramarine blue, or "neel", was taxable under Entry 25 of Part II of Schedule II of the Madhya Pradesh General Sales Tax, Act, 1958, or under the residuary entry in Part VI of Schedule II of that Act. The former entry at the relevant time covered dyes and the Sales Tax authorities contended that ultramarine blue was a dye and should be taxed as such. The High Court referred to the Concise Oxford Dictionary which stated that ultramarine blue was a pigment made from lapis lazuli. It referred to Chambers's Encyclopedia which stated that blue pigments in common use by artists consisted of native and artificial ultramarine, cobalt, indigo and prussian blue. It then referred to the dictionary meaning of 'dye'. It found :

"13. Ultramarine blue is (a) pigment got either from "lapis lazuli" or artificially by mixing clay, carbonate of soda, sulphur and resin. (b) that when obtained from lapis lazuli or cobalt, it can be permanent and can be used by artists for painting skies and distances in landscapes, (c) when obtained artificially is not permanent, (d) also the base for a powder used by laundresses.

14. Treating neel as a dye arises out of the failure to distinguish "dye" in its true meaning from a pigment and from the "blue, a powder used by laundresses". This

powder cannot be used to impregnate tissues when the material is in a raw state to yield more permanent results. It is not capable of being fixed to the fabric as when it is used on the fabric it is fugitive, not fast to light, nor resistant to action of water and is not capable of diluting acids or alkalis. It is notoriously disputed that neel is used after the clothes are washed, usually at the first rinsing, and that with each rinsing it gets washed away. It cannot resist or withstand the use of detergents or even washing-soda which is alkaline in nature. Finally, it is neither a direct dye nor a mordant." The High Court concluded that ultramarine blue was not a dye.

4. N. Ganu Bhai's case considers whether ultramarine blue, or "neel", is a dye. In so doing it finds that ultramarine blue or "neel" is a pigment. The case, far from supporting the assesses, is against them.

5. In *Assistant Commercial Taxes, Officer, Jodhpur vs. Rajasthan Chemical Corporation*, 65 S.T.C. 356, the question was whether ultramarine blue or "neel" was included in the term 'pigment'. The Board of Revenue for Rajasthan, from whose order a reference was made to the High Court, had posed the question whether ultramarine blue or "neel" in common parlance was covered by the expression "pigment". The Board had not gone into the question but had relied upon an earlier decision where the Board had held that ultramarine blue could not be considered to be a pigment. (No details of the material that was before the Board on the earlier occasion are set out in the High Court's judgment). The High Court said that the word "pigment" in the relevant entry had been used along with dyes, paints, varnishes and dry colours. The dictionary meaning of the word "pigment" was "any substance used for colouring: that which gives colour to animal and vegetable tissues". Pigment brown, pigment carmine, pigment chrome yellow, etc. were used to convey colouring, by particular colours. Ultramarine blue or 'neel' was not a colour. In common parlance, ultramarine blue or 'neel' was understood as a substance which was used to whiten clothes. It was not understood as a colour. It was a whitening agent for laundry purposes, used by washermen or by householders. Ultramarine blue was not a colour as it was used to whiten clothes. Ultramarine blue was not a pigment.

6. We have some difficulty with the reasoning of Rajasthan Chemical Corporation's decision. According to the High Court itself, ultramarine blue is used to whiten clothes. We do not, therefore, follow why it is not a colour or colouring material or why it is not a pigment.

7. In *Union of India & ors. vs. C.M.C., India, Ahmedabad*, 1979 E.L.T. 298, considerable evidence had been led by the assessee and little by the Sales Tax authorities. The Gujarat High Court noted the evidence of the assessee's witness that the terms used in the relevant tariff entry were technical terms, that is, terms used by technologists. This, the High Court said, supported the assessee's case that "ultramarine blue is not known as a pigment in common parlance and that it is known only as ultramarine blue". The evidence showed that "only those persons who were conversant with properties of ultramarine blue may call it as a pigment in scientific term, but so far as business community is concerned, it is known only as ultramarine blue..... Now, it is found from his evidence and other evidence on record that ultramarine blue is used mainly for the purpose of heightening the whiteness of things to which it is applied. Under these circumstances, even though according to the chemical tests, it can be said to be a pigment, it is not known as such and in the business community or by persons who are dealing with it..... He further admits that in the market, the substance in question is known as ultramarine blue..... The evidence established, the High Court said, that the product manufactured by the assesses was known only as ultramarine blue by consumers and the commercial community. The Excise authorities had not been able to controvert

by evidence the case of the assesses that the particular product was known only as ultramarine blue not only to the manufacturers and traders but even to the common people. In the absence of any evidence on the point, the High Court said, it would be hazardous to interpret the term pigment in the entry as suggested by the Excise authorities.

8. It seems to us that the focus in the case before the Gujarat High Court was misdirected. That the assessee's product was ultramarine blue was not in dispute. What was in dispute was whether ultramarine blue was known as a pigment or whether it was considered to fall under some other broad or generic description.

9. The Madras High Court in the judgment under appeal referred in extenso to the judgment of a learned single Judge of the Calcutta High Court in *M/s. Nilsin Company vs. Collector of Central Excise*, 1984 ECR 928. The issue before the Calcutta High Court was whether ultramarine blue was a pigment for the purposes of assessment under item 14(1)(5) The learned Judge said :

"(13). The respondents in paragraph 17 of the affidavit- in-opposition have averred that in paints like emulsion paints or water paints, pigment finishes for leather, printing ink, textile printing, Ultramarine Blue is compounded in larger proportion. They have also set out in paragraph 18 of their affidavit-in-opposition the definition of the expression pigment given in various dictionaries. In the book *Modern Surface Coating* by Paul Nylen and Edward Sunderland, at page 349, the said book has described 'pigment' as the 'internationally accepted term for the powdered material intended to be dispersed in liquid or solid binders for the production of Paints, printing inks, plastic materials, rubbers, vitrine enamels.' In the said book Ultramarine Blue has been classified as a synthetic and inorganic pigment. The respondents have also relied upon Webster's 3rd International Dictionary, 1968, page 1714 which describes 'pigment', inter alia as a natural or synthetic inorganic or organic substance that, imparts a colour including black or white to other materials especially, a powder or easily powdered substance mixed with a liquid in which it is relatively soluble and used in making paints, enamels and other coating materials, inks, plastic, rubber and also for imparting opacity and other desirable properties as well as colour.

(14) After the hearing was concluded, the learned Advocate for the petitioner placed before me the *Condensed Chemical Dictionary*. 10th Edn. revised by Gessner G. Hawley, published by Van Nostrand Reinhold Co. Incidentally, the respondents in paragraph 17 of their affidavit-in-opposition, had relied upon the 1953 edition of Van Nostrand's *Chemical Dictionary* for the definition of 'pigment' as a colouring substance. The said *Condensed Chemical Dictionary* claims to contain three distinct types of information, namely, (i) technical descriptions (ii) extended definition, and (iii) descriptions or identifications of wide range of trade mark products. The said *Dictionary*, in my view, does not support the claim laid by the petitioner. Thus, at page 1068 of the said *Dictionary* the properties of Ultramarine Blue have been, inter alia, described as "Inorganic pigment; blue powder; good alkali and heat resistance..." The said *Dictionary* mentions the following uses of Ultramarine Blue: "Colorant for machinery and toy enamels; white baking enamels: printing inks, rubber products, soaps and laundry blues, cosmetics, textile printing." "Note: Used in very low percentage to intensify whiteness of white enamels rubber compounds, laundered clothing etc. by offsetting yellowish undertones; gives a 'blue' rather than a

'yellow' white". According to the same Dictionary, the expression "Colorant" means any substance that imparts colour to another material or mixture". Colourants are either dyes or pigments" (vide page 267 of the book). I may also refer to the definition of 'pigment' given at page 817 of the said Condensed Chemical Dictionary :-

"Any substance, usually in the form of a dry powder, that imparts colour in another substance or mixture, Most pigments are insoluble in inorganic solvents and water... To qualify as a pigment, a material must have positive colorant value." The definition given in the said book excludes certain substances including whiting. Mr. Bhattacharyya is not correct in contending that Ultramarine Blue is whiting because, according to the said dictionary, whiting is entirely a distinct product consisting of finely ground, naturally occurring calcium carbonate derived from chalk, limestone, etc. and used as filter, putty, etc. One of the properties of Ultramarine Blue is that it is a whitener, i.e. a white pigment or colorant used in the paper and textile industries (vide Condensed Chemical Dictionary, page 1096). Therefore, I conclude that the condensed Chemical Dictionary, 10th Edn. relied upon by the petitioners shows that Ultramarine Blue is a pigment having various uses one of which is whitening or brightening textiles and clothes.

(15) For the foregoing reasons, I conclude that there is overwhelming evidence that Ultramarine Blue is a pigment. Ultramarine Blue does not constitute a separate product as contended by the petitioners people conversant with and dealing with the said product understand Ultramarine Blue as a pigment, i.e. as a colorant. It is used for imparting colour to various substances. Thus, not only from the stand-point of its physical constituents but also from the stand-point of its various uses and of popular understanding Ultramarine Blue is a pigment. In this connection, it is also necessary to note the comprehensive manner in which the entry No.14 gave description of the goods which were subject to the rate of duty specified in the said item. Item No.14(1)(5) was broadly in the form of a residuary clause for inclusion of pigments, colours, paints and enamels not otherwise specified. Thus, pigments, colours, paints and enamels which have not been mentioned in any other sub items would be covered by Item 14(1)(5) of the First Schedule to the Central Excises and Salt Act, 1944. Accordingly, I hold that the petitioner is not entitled to challenge the validity of the excise duties imposed upon the product Ultramarine Blue manufactured by the petitioner. No question also arises of commanding the respondents to refund excise duties recovered from the petitioner under Item No.14(1)(5) of the First Schedule to the Central Excises & Salt Act, 1944".

10. The Madras High Court in the judgment under appeal rightly relied strongly on the Calcutta High Court decision to come to the conclusion that ultramarine blue was a pigment and, therefore, liable to sales tax under Item 110.

11. Neither the assesses nor the Sales Tax authorities placed any evidence before the Tamil Nadu Sales Tax Appellate Tribunal or before the High Court. They preferred to rely upon the decisions of the High Courts aforementioned. We are in no doubt that ultramarine blue or 'neel' is a pigment having regard to the dictionaries and literature mentioned in the decisions which we have discussed above and that, having regard to its use as a whitener or colouring matter, it is popularly understood to be a pigment.

12. Accordingly, the appeals are dismissed with no order as to costs.