

Municipal Corporation for the City of thane and Others

Vs

Asmaco Plastic Industries and Others

Civil Appeal No. 3491 of 1992 with Nos. 3492-93 of 1992

(S. C. Agarwal, G. B. Pattanaik, S. R. Babu JJ)

17.07.1998

JUDGMENT

RAJENDRA BABU, J. -

1. In these appeals, the questions that arise for consideration are as follows :

(i) Whether for the purpose of levy of octroi duty, PVC resins in powder form would fall under "plastic and plastic goods, plastic powder" in Item 53(c) of Schedule I to the Maharashtra Municipalities (Octroi Duty) Rules, 1968 framed under the Bombay Provincial Municipal Corporations Act, 1949 or under Item 32(c) of Schedule H to the Bombay Municipal Corporation (Levy of Octroi) Rules, 1965 framed under the Bombay Municipal Corporation Act, 1888.

(ii) Whether for the purpose of levy of octroi duty, synthetic hydrocarbon resin is to be treated as "plastic and plastic goods, plastic powder" in Item 32(c) of Schedule H to the Bombay Municipal Corporation (Levy of Octroi) Rules, 1965 framed under the Bombay Municipal Corporation Act, 1888.

2. Civil Appeals Nos. 3491-93 of 1992 relate to octroi duty levied by the Municipal Corporation of Thane which is governed by the Bombay Provincial Municipal Corporation Act, 1949. Octroi duty is levied by the said Corporation under the Maharashtra Municipality (Octroi Duty) Rules, 1968 and the relevant entries which were considered by the High Court were Entry 40(b) relating to "chemicals of all sorts" and Entry 53(c) relating to 44 plastic and plastic goods, plastic powder, etc." In the impugned judgment, the Division Bench of the High Court has held that PVC resin in powderform does not fall under "plastic" in Entry 53(c) but falls under "chemicals" in Entry 40(b).

3. Civil Appeals Nos. 7087-88 of 1993 relate to the Municipal Corporation of Greater Bombay which is governed by the Bombay Municipal Corporation Act, 1888 and the Municipal Corporation (Levy of) Octroi Rules, 1965. In that case, the relevant entry is Entry 32(c) which, with a slight difference, is similar to Entry 53(c) and in the said entry also, the words "plastic and plastic goods, plastic powder" have been used.

4. The respondents filed writ petitions to contend that the said goods are only ingredients used in the manufacture of plastic goods and, therefore, are neither plastic in nature nor powder in form; that it is not a resin and all resin must be regarded as polymers and not plastics; that unless other ingredients like stabilizer and lubricants are used, there cannot be solidity in its finished state and shaping by flow at some stages of its manufacture; that the said product is neither a perfume nor a

toilet requisite, a colour or a household good and does not answer the description of goods listed under the particular class and, therefore, they contended that they do not constitute plastic. They also set out before the High Court in challenging the action of the respondents certain technical details as to the nature of the commodity in question and contended that the levy of octroi duty on the said product under Item 32(c) of Schedule H or Entry 53(c) of Schedule I under the relevant Rules is not appropriate. The substance of the contentions put forth on behalf of the respondents is that plastic is a material that contains a high polymer, usually synthetic, combined with other ingredients such as curatives, fillers, reinforcing agents, colorants, plasticizers etc. while synthetic resin of which the said product is but one type is a polymer synthesised, in this particular case, for adhesive use. Secondly, it was stated that synthetic resin is a polymer itself while plastic is polymer plus the additives mentioned as aforesaid. Therefore, they contended that the product in the form of pellets and not in the form of powder could be covered by Item 32(c) of the Schedule to the said Act. They further pointed out that hydrocarbon resin is distinct from plastic. Entry 40(b) relates to chemical of all sorts, while Entry 53(c) relates to plastic and plastic goods, plastic powder, etc. The Bombay High Court held that the PVC resin in powder form does not fall under plastic and plastic goods under Entry 53(c) or Entry 32(c) of the relevant Rules and falls under the head "chemicals" under Entry 40(b) Schedule of the relevant Rules. Hence these appeals.

5. The Octroi Schedule framed in accordance with the Maharashtra Municipality (Octroi Duty) Rules, 1968, Class II refers to articles set out in the Schedule giving the serial number, description of the goods and the rate at which the octroi is levied. The goods are classified under Class II as articles used for food and drink for men and animals and drugs and under Serial No. 14, all chemicals, chemical insecticides, surgical goods of all kinds are included. Class III refers to articles used for fuel, lighting, washing and industrial use and under Item 40(b), chemicals of all sorts are included.

6. We may firstly refer to the scheme of bringing several commodities to tax, i.e., the several goods under the Octroi Schedules. In either Rules, several classes of goods are mentioned in various headings like articles of goods, animals, articles used for fuel, lighting, washing and industrial use, articles used in the construction of building, roads, and other structures and articles made of wood or cane, perfumes, toilet requisites, colours and household goods, tobacco requisites and so on. Under each heading, several goods are mentioned, but we cannot discern any scientific basis in bringing these goods under one heading or the other. For example in Class III articles used for fuel, lighting, washing and industrial use, it is not clear whether charcoal, which is at Item 14, when brought into a local area which is to be used to industrial use could be subjected to octroi duty. Similarly, when soap of all kinds is used in Item 17, boot and metal polish are lugged in. While detailing the rates of duty, what is stated is 2 per cent ad valorem for washing soap and bath soap costing not more than Rs. 1.25 per cake. It obviously would indicate that these goods need not necessarily be used for industrial purpose or as fuel for lighting or washing. While soap is used as a washing material, boot and metal polish cannot be stated to be a washing material. Again, various detergents used in washing clothes, floor and utensils are referred to in Item 18. It is not clear whether it is related only to such goods which are meant for the purpose of industrial use. Viewed from this angle, we do not think the classification of goods made in these entries is on any scientific basis and heading as such in any one group does not by itself control the meaning to be attached to each of such goods.

7. In Entry 32(c) of the Rules framed under the Corporation Act or under Entry 53(c) of the Octroi Schedule framed under the Municipalities Act, we are concerned with the expression "plastic, plastic goods and plastic powder". We may contradistinguish this entry with a relatable entry in the

Customs Tariff Act, 1975 where the goods are more scientifically categorised. Under Chapter 39 of the Customs Tariff Act, the expression "plastic and articles thereof" is used to bring within that heading the "primary forms, polymers of ethylene, polymers of propylene or of other olefins, polymers of styrene, vinyl acetate or other vinyl esters". Polymers of vinyl chloride or of other halogenated olefins in primary forms and vinyl chloride polymers are also brought in under this heading. In the present enactment, when the expression "plastic, plastic goods and plastic powder" is used along with bakelite and bakelite goods and the manner in which the legislature uses these expressions will clearly indicate that the intention is to cover all kinds of plastic material whether in primary form or in any other secondary form.

8. Learned counsel on either side relied on technical literature on the matter to impress upon us the strength of their respective cases. We do not think it would be appropriate to rely upon such data to interpret the entry in question in one manner or the other because in tax enactments, when particular commodities are brought to taxation, the meaning attributed to the commodities will be with reference to their commercial parlance, that is, if those who deal with the goods understand the said goods in one manner or the other. The technical material though of course may be useful on certain aspects, the same will not be decisive of the matter.

9. It is necessary to advert to a few decisions relied upon by the learned counsel. In *Chemicals and Fibres India Ltd. v. Union of India* (1982 ELT 917 (Bom)) a distinction was sought to be drawn about between resins, polymers, polymer plus additives and plastics. The question that fell for consideration in that case was whether polyester chips of textile grade were assessable to excise duty under Item 15-A of Schedule I of the Central Excises and Salt Act, 1944. The goods were classified in a different manner and polymer terene was specifically added therein. In the manufacture, polythene films, lay-flat tubings and PVC sheets and polyvinyl chloride sheets were specifically mentioned. In that context, the Court had to examine the various meanings given to the expression thereunder and adopted the nomenclature of the January 1978 Edition of Brussels Tariff Nomenclature. It was not disputed in that case that the polymer chips fibre grade is a saturated linear polyester. Considering the nature of the product on the material placed before the Court, it was held that it fell within clause (1) of Item 15-A of the First Schedule to the Excises Act. On that basis, the resins, polymers and polymer additives were separately considered.

10. In *Industrial Plastic Corpn. Ltd. v. Union of India* (1983 ELT 425 (Bom)) distinction between plastic and resin was noted. The expression "plastic" was held to be broader than the expression "resin" but it was also noticed that both these terms are used indiscriminately. Though etymologically and scientifically, the products such as clay, glass or rubber could be considered to be plastic, they were never regarded as such. Again the entry that fell for consideration was Item 15-A of the First Schedule to the Central Excises and Salt Act. It was on that basis the Court held that the various items such as wood floor, phenolic moulding powder could fall in the various goods/items mentioned in Item 15-A of the First Schedule to the Central Excises and Salt Act.

11. We think that the appropriate manner in which the commodity in the present case, namely, plastic powder, has been treated as a separate entry it is brought to tax under Item 32(c) or 53(c) to Schedule H under the relevant Rules. Similar would be the position with reference to hydrocarbon resins. Even hydrocarbon resin is treated on the same footing as a synthetic plastic and, therefore, the goods in question cannot be treated as plastic goods or plastic powder but as separate goods and, therefore, we cannot accept the contention put forth on behalf of the respondents that the said goods are neither plastic in nature nor powder in form and we do not accept the contention that hydrocarbon resin is distinct from plastic.

12. In view of the above discussion, we allow the appeals filed by the Municipal Corporation and the Municipal Council, Thane and set aside the order made by the High Court by declaring the goods as failing within the entry as stated earlier. In the circumstances of the case, the parties on either side shall bear their respective costs.