SUPREME COURT OF INDIA

M\s. Forage and Co. (of Lushala)

Versus

Municipal Corpn. of Greater Bombay

(B.N. Kirpal, A.P. Misra and N. Santosh Hegde, JJ.)

Civil Appeal No. 2318 of 1987.

27.10.1999

ORDER

B.N. Kirpal, J. - The only question which arises for consideration in these appeals is whether import of zinc oxide within the limit of Greater Bombay attract the imposition of octroi.

2. The appellant is in the business of import of zinc oxide into the Greater Bombay. The said item is then sold to rubber manufacturing industry. At the time of its import into Bombay octroi was sought to be levied under Section 192 of the Bombay Municipal Corporation Act, under Item 26 of Schedule H.

3. On 10th May, 1978 the appellant objected to the levy of octroi on the import of zinc oxide saying that this article was not used in the construction of buildings, roads or other constructions. The contention of the appellant was that in Schedule H Item No. 26 fell under Class IV which referred to articles used in construction of buildings, roads and other structures and articles made of wood and cane. The contention of the appellant was that zinc oxide was used only by the manufacturers of rubber goods and, therefore, it could not be regarded as an item falling under that class and, therefore, no octroi could be levied.

4. When the respondent rejected the representation of the appellant a writ petition was filed in the High Court at Bombay. The Single Judge of the Bombay High Court came to the conclusion, on the basis of the affidavits which were filed before him, that only a negligible percentage of zinc oxide was used as a component of paint and that was not sufficient to hold that zinc oxide was an article used in the construction of roads or buildings. He was further of the opinion that in order that an item should be taxable it must conform to the class indicated in Schedule H and inasmuch as zinc oxide could not be regarded as an article used in the construction of buildings etc., therefore, no octroi could be levied thereon. In coming to this conclusion the learned Judge relied upon a decision by Vaidya J., Single Judge of the High Court in the case of ***Municipal Corporation of Greater Bombay v. Glaxo Laboratories (India) Pvt. Ltd. in Appeal No. 755 of 1976.***

5. The appellant then filed an appeal and the Division Bench allowed the same. It came to the conclusion that :

"The fact that Schedule H is divided into what are termed classes; is also instructive. The word `class' has been deliberately used to indicate the classification of the articles covered by schedule H as far example, `Animals' and `Metal and articles made of metal'. The headings are only meant to provide a convenient index to assist the importer of an article or, for that matter, an officer of Municipal Corporation, to locate the article in the Schedule."

6. Then overruling to that view expressed by Vaidya J., in *Glaxo Laboratories'* case while allowing the appeal it dismissed the writ petition which had been filed by the appellant.

7. Mr. R.S. Suri, learned counsel appearing for the appellant submits that the judgment under appeal has since been overruled by the Bombay High Court in ***Municipal Corporation, Greater Bombay v. Monopol Chemicals P. Ltd., AIR 1988 Bombay 217.*** He further submits that zinc oxide is not an item which can possibly fall under Class IV and therefore no octroi could be levied on the import of the said item into Bombay.

8. Section 139(4) of the Bombay Municipal Corporation Act is the charging section in so far as imposition of octroi is concerned. What is relevant for our purposes is Section 192(1) which reads as follows :

"192.(1) Except as hereinafter provided, a tax, at rates not exceeding those respectively specified in Schedule H, shall be levied in respect of the several articles mentioned in the said Schedule, or so many of them or such of them as the Corporation shall from year to year in accordance with section 128 determine, on the entry of the said articles into Greater Bombay for consumption, use or sale there in. The said tax shall be called an "octroi".

9. Schedule H contains the list of articles liable to payment of octroi. There are a number of articles contained in serial No. 1 to 60 which are enumerated in the Schedule. Against each article the maximum rate of octroi leviable is provided. The entries in the said Schedule are divided into different classes. The IXth class being miscellaneous. Insofar as zinc oxide is concerned it is included in serial No. 26 in class IV which reads as follows :

CLASS IV ARTICLES USED IN THE CONSTRUCTION OF BUILDING, ROADS AND OTHER STRUCTURES AND ARTICLES MADE OF WOOD OR CANE.

23. Cement of all sorts	Rs. 2, pp per metric ton.
24. Coal Tar, Asphalt, butument, flooring stone, manganese, emerty stone or powder, chalk powder, stone chips Agra stone, stone for building clain ker and coal ash.	Rs. 0.14p. 50 kgs.
25. Glazed bricks, tiles, marble pieces, fire bricks, bricks, all kinds of roofing, tiles, flooring tiles, china mosaic chips, mosaic marble, mosaic or terrace tiles, earthen pipes and asbestos cement sheets.	4 per cent ad valorem

26. Paints, Distemper and colour washes used for painting building, varnish, oil, turpentine, zinc oxide and red oxide.	4 per cent boiled linsed; 4 per cent ad valorem

10. It is quite evident that Section 192 has to be read along with Schedule H. The said section provides that octroi is to be levied in respect of several articles mentioned in the Schedule. The articles which are mentioned in the Schedule are contained in Item Nos. 1 to 60. Zinc oxide is contained in Article 26. It is no doubt true that Schedule H has been divided into different classes. As has been observed by the Division Bench, the sub-headings were meant only to provide a convenient index and no more. In this regard we may usefully refer to a decision of this Court in the case of ***Frick India Ltd. v. Union of India, 1990(1) SCC 400*** where in connection with the question of referring to the headings in connection with the interpretation of statute it was observed at page 405 as follows :

"It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplies the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item 29-a."

11. In any case, therefore, heading is not decisive of the question whether an article mentioned in the Schedule can be subjected to tax or not. The Division Bench, in our opinion, was therefore correct in coming to the conclusion that the heading of the class cannot affect the taxability of zinc oxide to octroi.

12. There is one other reason why the judgment of the Single Judge was not correct. He had come to the conclusion that zinc oxide was used as a component of paint. It is not disputed that paint is used in the construction of buildings. Merely because only 0.25 per cent per value of zinc oxide is mixed with the paint used in the buildings cannot be regarded a ground for coming to the conclusion that zinc oxide is not an article used in the construction of buildings. If this reason of the learned Single Judge is correct it would mean that a pinch of salt which is added in preparing of food cannot be regarded as an item of food because of the small quantity which is used in the said preparation. What has to be seen for the purpose of imposition of levy of octroi is whether an item is mentioned therein then irrespective of the heading under which it is contained the Corporation would be entitled to levy octroi on the import of the said item into Bombay.

13. We therefore hold that the decision of the Division Bench of the Bombay High Court does not call for any interference. The appeals are accordingly dismissed. For the

view we are taking it is quite obvious that the decision of the Full Bench of ***Municipal Corporation, Greater Bombay v. Monopol Chemicals, AIR 1988 Bombay 217*** does not lay down the correct law. In view of the order dated 11.3.1991 of this Court in the present case the appellant will pay to the respondent the amount of duty due along with the interest at the rate of 12 per cent. This payment will be made within three months from today. The respondent will be entitled to costs.