
Director of Entry Taxes and Another Vs Sricol Chemicals Industries

A.O.D. No. 98 of 1973

Court: Calcutta High Court

Date of Decision: July 25, 1978

Acts Referred:

Constitution of India, 1950 – Article 187, 226

Citation: 83 CWN 68

Hon'ble Judges: S.P. Mitra, C.J; S.K. Datta, J

Bench: Division Bench

Advocate: A.P. Chatterjee, A. Dutt, Junior Standing Counsel and S.L. Saroff, for the Appellant; Sanjoy Bhattacharjee and Aparna Dutt, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Mitra, C.J.

This is an appeal from a judgment of Ghosh, J. delivered on October 4, 1972 in an application under Article 226 of the

Constitution, inter alia, for issue of a Writ in the nature of Mandamus commanding the respondents before the trial Court who are the appellants

before as to cancel or rescind certain orders of assessment of entry tax. A Writ in the nature of certiorari was also asked for directing that the

purported assessments be quashed. Ghosh, J. has made the Rule absolute except in regard to some of the assessments. His Lordship directed the

respondents (the appellants before us) to refund to the petitioner (the respondent before us) a total sum of Rs. 55,540.30. The respondent imports

various raw materials from foreign countries for the purpose of manufacturing dyes. The respondent holds a licence issued by the Central

Government for import of the following chemical compounds:--

1. Sodium Nephthionat. 2. Asetic Anhydride 3. Ortho Toluidrine. 4. Benzidine Dihydrochloride. 5. Di-nitro Cholorobenzene. 6. 2 : 5 Dichloronitro

benzene 7. 4--Chloro-O-Nitrotoluene. 8. Ortho Chloronitrobenzene. 9. Para Nitrochlorobenzene. 10. Aniline Oil. 11. Netantro Anitine. 12.

Ortho Nitro Toluene. 13. Para-Nitro Toluene. 14. Para-Nitro Aniline. 15. Alpha Naphthylamine. 16. Beta Nephthol. 17. H. Acid. 18. Ortho

Anisidine. 19. Para Anisidine. 20. Para Toluidine. 21. J. Acid Urea. 22. J. Acid. 23. Chicago Acid. 24. Gama Acid. 25. N.W. Acid. 26. Ortho

Toluidine. 27. Accto Acetic Esten. 28. Beta Oryuaphthene Acid. 29. Armstrong Acid. 30. Rhoduline Acid. 31. Dehydrothiox P-Toluidine

Disulphonic Acid. 32. Aceto Acetenilide.

2. The respondent's case is that these chemical compounds are raw materials popularly known as "Dyes Intermediates" required for manufacturing

various types of dyes. Under the Taxes on Entry of Goods into the Calcutta Metropolitan Area Act, 1972 (West Bengal Act V of 1972) taxes are

levied and collected on the entry of specified goods. Sub-section (1) of section 6 in Chapter III of this Act lays down:--

3. "6(1). Save as otherwise provided in this Chapter, there shall be levied and collected, for the purposes of this Act, a tax on the entry of every

specified goods into the Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that Area, at such rate, not

exceeding the rate, specified in the corresponding entry in column 3 of the Schedule, as the State Government may, by notification, specify.

4. The respondent from time to time was clearing the aforesaid chemical compounds from the Port of Calcutta and bringing them into the

Metropolitan Area. The respondent made a declaration in Form 4 prescribed under the said Act before the Calcutta Jetty Collection Office where

it was required to pay entry tax in respect of all specified goods before bringing them into the Metropolitan Area. From annexure "A" to the

petition before the trial court it appeared that the respondent was made to pay entry tax, inter alia, on the above goods under item 49(a) in Class

VI of the schedule to the Act. Item 49(a) reads thus:

Serial Specified Goods Rates of taxes

No.

49(a) Aromatic chemicals, attars, scents scented 2per cent ad valorem

materials, perfumery of all kinds.

5. In the trial court an affidavit of Nani Gopal Mandal affirmed on the 22nd August, 1972, was used. Nani Gopal Mandal on the date of the

affidavit, was the Zonal Officer-in-Charge of Entry Tax Check Post within the Port of Calcutta including the Jetty Collection Office. He has

annexed to his affidavit a copy of an opinion given by an Assistant Professor of the Chemistry Department of the Presidency College, Calcutta.

The Assistant Professor has stated that the aforesaid chemical compounds except H. Acid and J. Acid Urea are aromatic chemicals. With regard

to the two items, namely, H. Acid and J. Acid Urea he was unable to express any opinion and stated that the chemical nomenclature of these items

was necessary. From Rogers' "Manual of Industrial Chemistry", 6th Edition, Vol. 2 at pages 1080 and 1081 items 347 and 353 respectively we

find that H. Acid and J Acid Urea are Naphthelene Derivates. H. Acid is used as "Azodyes and acety H. Acid" and J. Acid Urea is used as

Dyes".

6. Various authorities were relied on by Counsel for the parties before us to enable us to appreciate what precisely was meant by "Aromatic

Chemicals". It would be enough for us to refer to "Organic Chemistry" 2nd Edition, by Morrison and Boyd, both professors of Chemistry of the

New York University. At page 311 of this book it is, inter alia, stated :

Chemists have found it useful to divide all organic compounds into two broad classes-Aliphatic Compounds and Aromatic Compounds. The

original meanings of the words "Aliphatic" (Fatty) and "Aromatic" (Fragrant) no longer have any significance.

Aliphatic Compounds are open-chain compounds and those cyclic compounds that resemble the open-chain compounds. The families we have

studied so far-Alkanes, Alkenes, Alkynes and their cyclic analogs-are all members of the Aliphatic class.

Aromatic Compounds are Benzene and compounds that resemble Benzene in chemical behaviour. Aromatic properties are those properties of

benzene that distinguish it from Aliphatic Hydrocarbons. Some compounds that possess aromatic properties have structure that seem to differ

considerably from the structure of benzene; actually, however, there is a basic similarity in electronic configuration...

7. In Organic Chemistry, therefore, originally fatty Compounds were known as Aliphatic Compounds and fragrant Compounds were known as

Aromatic Compounds; but with the advance of science this broad distinction could not be maintained. But there is yet a difference between

Aliphatic Compounds and Aromatic Compounds and that distinction has been pointed out in the excerpts we have quoted above. Aliphatic

Compounds are open chain compounds and those cyclic Compounds that resemble open-chain compounds. Aromatic Compounds are benzene

and Compounds that resemble benzene in Chemical behaviour.

8. We would have discussed in this judgment the views of other authorities as well. But the respondent's Counsel has not ultimately disputed

before us that all the chemicals we have to deal with in the present case were aromatic Compound or chemicals. But his point is that these

compounds are understood in the trade and industry in a popular sense. Popularly they are called "Dyes Intermediates.

9. Our problem, therefore, in the present appeal, is to determine (1) whether the compounds in question though aromatic chemicals are popularly

known in the trade as "Dyes Intermediates" (2) whether they can be subjected to entry tax under item 49(a) of the schedule to the West Bengal

Act V of 1972.

10. In support of his contentions that the trade both in India and outside knows these chemicals as "Dyes Intermediates", learned counsel for the

respondent placed before us a publication by a German firm called ""Schimmel & Co., Aktiengesellschaft, Miltitzbei, Leipzig."" We were told that

this firm was a well known firm of chemists with an international repute. In its jubilee edition of 1929 it published a ""Short Manual"" of the most

important odoriferous chemicals and aromatics their properties, use and application"", revised by Dr. Fred Winter. In this manual there is no mention

of any of the compounds we have to consider in the instant appeal. This shows, says learned counsel, that in the trade they are not known as

aromatic chemicals at all.

11. The German firm's publication throws some light on the subject no doubt. But it cannot be accepted as a convincing authority to prove that

popularly the relevant chemicals are known as ""Dyes Intermediates.

12. Mr. Sanjay Bhattacharyya, learned Counsel for the respondent then relied on a publication of the Government of India, Ministry of Foreign

Trade and Supply on ""Import Trade Control Policy"" for the year April, 1969--March 1970 Volume 1. There are two appendices to this

publication, namely Appendix 24 Annexure List III and Appendix 28 List IV. The first list is a list of ""Dyes Intermediates permitted on restricted,

basis to actual users"". The second list is the ""List of materials which will be allowed import against licences issued for import of aromatic

chemicals"". These two lists have been printed separately at pages 274 to 275 and 300 to 304 respectively of the Union Government's publication.

13. This publication by the Union Ministry of Foreign Trade and Supply appears to us to be of considerable significance for purposes of this

appeal. In allowing import of chemicals from abroad the Government of India makes a distinction between ""Dyes Intermediates"" and ""Aromatic

Chemicals"". In the trade, therefore, all aromatic chemicals are not treated as ""Aromatic Chemicals."" Some of them are grouped as ""Dyes

Intermediates"" although from the point of view of organic chemistry they may be aromatic chemicals. This is a distinction which the Central

Government has made and we cannot ignore this distinction in disposing of this appeal or in construing the said item 49(a) in the Schedule to the

West Bengal Act V of 1972 which is an Act relating to trade and commerce. In Riegel's ""Industrial Chemistry"", 5th Edition at page 580 there is a

discussion in Chapter 27 on the manufacture of ""Dye Intermediates."" Riegel, inter alia, says"":

The group of Synthetic Compounds called intermediates is the starting point for the manufacture of dyes; they form the raw materials for the dye

industry; to put it still another way the intermediates are the foundations of the dye construction. The name is certainly appropriate, for they are the

intermediate compounds between benzene, naphthalene and anthracene, on the one hand, and the brilliant and varied dyes on the other..

14. Dyes intermediates, therefore, have a distinctive connotation well understood by those who deal in these substances. In fact, in the sectional

(Chemical) list of Indian Standards Published upto 30th September, 1977, the ISI (Indian Standards Institution) has given an entirely separate list of

Dyes Intermediates"" at pages 12 and 13. This is an indication that ""Dyes Intermediates"" is a heading under which some chemicals are named and

understood by the Indian Standards Institution which operates in our country to maintain the purity and standards of various articles of trade.

15. The West Bengal Act received the assent of the Governor and was first published in the Calcutta Gazette Extraordinary on the 4th May, 1972.

It is to be presumed that the State Legislature knew that the Union Government in granting licences for import of Chemicals observed a distinction

between ""Dyes Intermediates"" and ""Aromatic Chemicals"". But in spite of that the State Legislature did not specifically include ""Dyes Intermediates

either in the said item 49(a) or in any other item of the Schedule to the West Bengal Act V of 1972. In the schedule itself the intention of the

legislature is explicit in certain other items. We shall give just a few instances. Item 17 in Class IV-A is ""Mineral oils of all sorts"". What these

mineral oils are have thereafter been specified and what is to be excluded has also been expressly stated. Similarly, item 8(b) in class I is ""Gur of all

sorts"". Item 37 in class V is ""Glass, glasware, chinaware, enamelware all kinds of crockery used for construction or decoration of buildings"". Item

47(a) in Class VI-A is ""Beads of all sorts. Item 48(f) in class VI-B is ""Class, glassware, bottles, chinaware, earthenware, porcelainware (excluding

articles used for construction or decoration of buildings)"". Item 72 in class X is ""Chinaware, porcelainware electric insulators not otherwise

provided"". Item 74 is ""Dyes, indigo, tans, all colouring matter including printing pastes, inks."" Item 79 in class X is ""Photographic chemicals, films

and mounts"".

16. Upon reading the various items, we have referred to, we are of opinion, that in specifying articles to be taxed, the legislature has been

meticulous. It has taxed mineral oils of all sorts. It has taxed Gur of all sorts. It has taxed Beads of all sorts. It has taxed all kinds of crockery and

different varieties of Dyes and all colouring matters; but it has not taxed ""Aromatic Chemicals of all kinds"" or ""Aromatic Chemicals including Dyes

Intermediates"". Incidentally, we may point out that there is a tax on photographic chemicals and two of these photographic chemicals, namely, p-

Aminophenol and p-Aminophenol hydrochloride, are Benzene Derivatives, that is, aromatic chemicals and are used, amongst others, as

photographic developer as well as dyes; vide Rogers' ""Manual of Industrial Chemistry,"" 6th Edition, Vol. 2, page 1054, items 164 and 165.

17. For the reasons discussed above it seems to us that if the legislature intended to tax what the Government of India had described as ""Dyes.

Intermediates"" in its Import Trade Control Policy or what the trades understands as ""Dyes Intermediates"", it would have specifically included ""Dyes

Intermediates"" either in item 49(a) or in some other item of the schedule to the West Bengal Act V of 1972. We make this comment, particularly in

view of the care the legislature has taken in describing various other items in the said schedule.

18. Our attention has been drawn to the Central Government's aforesaid publication as well as to other authorities to support the respondent's

contention that, the chemicals, we are concerned with, in this appeal, are "Dyes Intermediates". We are not referring to these authorities in this

judgement inasmuch as the learned standing counsel appearing for the appellant does not dispute that these chemicals are used as "Dyes

Intermediates" but contends that they are "Aromatic Chemicals" all the same.

19. On the materials placed before us, therefore, we have reached the conclusion that the chemicals above-mentioned are "Aromatic Chemicals

but in the world of trade commerce and industry, they are known as "Dyes Intermediates". The question is whether the popular meaning should

prevail over the scientific meaning in construing item 49 (a) in class VI-C of the schedule to the West Bengal Act V of 1972.

20. In Craies' "Statutory Interpretation", published by Butterworths, London, in 1976, at page 57, it is stated: "nothing need be said at this stage

about the distinction between an ordinary and technical meaning, but something must be said about "fringe meaning" and the cognate problem of

the restrictions to be placed on the interpretation of general words. Problems of "fringe meaning" are sometimes spoken of as "problems of the

penumbra", the point being that, in the case of a great many words, there is no doubt about the hard core of their meanings, but different views may

well be taken on the question whether the word is applicable to things or situations outside that hard core. No one doubts that a chair is furniture,

but what about linoleum? A fully motor car is certainly a vehicle, but what if the engine and wheels are removed? Is a bicycle a carriage? Different

minds may take different views concerning the answer to these and countless similar questions. In a great many cases the answer will of course

vary according to the context in which the problem arises and the courts will be guided by the object of the legislation they are considering, but

very frequently the judge can do little more than say that a line has to be drawn somewhere and that he has decided to draw it beyond or short of

the facts of the case before him.

21. In the instant appeal we are faced with a problem similar to the problem of fringe meaning or the problem of the penumbra. The chemicals

which have been sought to be taxed are "Aromatic Chemicals". But amongst these Aromatic Chemicals there is a group of chemicals which is

known in the trade as "Dyes Intermediates." The object of the Act under which the tax has been imposed is "to provide for the levy of taxes on

entry of goods of certain kinds into the Calcutta Metropolitan Area for consumption, use or sale therein, and for matters connected therewith or

incidental thereto." What are the "certain kinds" of goods which are to be taxed have been specifically and exhaustively described in the schedule

to the Act. In view of the distinction which, before the Act came into force, the Government of India had made in its Import Trade Control Policy

between "Dyes Intermediates" and "Aromatic Chemicals", it seems to us that "Dyes Intermediates" is a "certain" kind of goods which would have

been mentioned specifically in the schedule to the West Bengal Act V of 1972, if the legislature intended at the date of the enactment to impose an

entry tax on them. The Court has to draw the line somewhere in the context of the object of the legislation and other relevant factors. On the

materials made available to us by learned counsel for the parties in the instant appeal we cannot but hold that the legislature did not intend to tax

Dyes Intermediates".

22. We "intend now to refer Crawford's "The Construction of Statutes" published in 1940. At pages 319 to 322, Article 187 runs thus:

Technical terms in a Statute, . . . must be accorded their technical meaning unless the Statute indicates that the legislature intended otherwise.

Moreover, there is a presumption that they have been used in their technical sense. Nevertheless, where it appears that a contrary meaning was

intended by the legislature, the common, or non-technical meaning, should be applied, or the technical meaning enlarged or restricted so as to

effectuate the obvious purpose of the legislature. This rule is applicable to technical legal terms, words having a special sense at common law,

military terms, and words of arts. And terms borrowed from a foreign law should be given the meaning they have in the foreign law. Similarly,

where the words incorporated in a Statute have acquired a specific meaning by virtue of judicial interpretation, such meaning should be accepted,

in the absence of some indication of a contrary legislative intention. And the same is proved with reference to commercial or trade names used in a

tariff Act to designate certain kinds of goods, where such names have acquired a wellknown meaning in trade and commerce. But where a word

has both a technical and popular meaning--no matter in what sort of a statute it appears--the latter meaning will prevail over former, in the absence

of any indication that the word was used in its technical sense.

23. Here is a case in which the chemicals we are concerned with have a technical and a popular meaning. Technically they are aromatic chemicals;

but popularly they are known as "Dyes Intermediates". There is no indication in the Statute that "Dyes Intermediates" are to be understood in the

technical sense. Whenever the Statute wanted to give such indication it had expressly said so, e.g., mineral oils of all sorts (item No. 17), Gums of all

sorts (Item No. 8 (b)), Beads of all sorts (item No. 47 (a)) or all kinds of crockery used for construction or decoration of building (item No. 37). In

the absence of any indication, therefore, in the Statute itself "Dyes Intermediates" appear to be outside the purview of the Statute as in cases like

these the popular meaning would prevail over the technical meaning.

24. Lord Esher, M.R. has made a similar observation in *Unwin vs. Hanson*, (1891) 2 Q.B. 115 at page 119. Lord Esher, M.R. has said : "If the

Act, is one passed with reference to a particular trade, business or transaction, and words are used which everybody conversant 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, though it may differ from the common or ordinary meaning of the words"".

25. The above observation of Lord Esher, M.R. are not strictly applicable to the facts of this case; but it lays down a sound principle of

construction of Statutes. We may take judicial notice of the fact that various chemicals are imported by us from abroad. These include ""Aromatic

Chemicals"". The imported chemicals enter the Calcutta Metropolitan Area. It is on record that the Government of India while granting licences for

import of ""Aromatic Chemicals"", adheres to a distinction or difference between some chemicals which are allowed to be imported as ""Aromatic

Chemicals"" and certain other chemicals which are allowed to be imported as ""Dyes Intermediates"" even though they are Benzene derivatives or

compounds that resemble Benzene in chemical behaviour. In these circumstances, while interpreting item 49 (a) in the Schedule to the West Bengal

Act V of 1972, we are not inclined to include ""Dyes Intermediates"" within the scope of ""Aromatic Chemicals"" in the absence of express words to

that effect. We agree with the conclusion of the learned trial Judge that the goods imported as ""Dyes Intermediates"" are not known in the trade as

Aromatic Chemicals"" and do not fall within item 49 (a) of the schedule to the Taxes on Entry of Goods into the Calcutta Metropolitan Area Act,

1972.

In the result, this appeal is dismissed. Interim orders, if any, are vacated We make no order as to costs.

S.K. Datta, J.

I agree.