(1960) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 102 of 1958

Akhtar Abbas APPELLANT

Vs

Asst. Collector, Central Excise and Others RESPONDENT

Date of Decision : 30-04-1960

Acts Referred:
Central Excises and Salt Act, 1944 — Section 1(2), 1(3)
Merged States (Laws) Act, 1949 — Section 3

Citation : AIR 1961 MP 353 : (1960) ILR (MP) 408 : (1961) JLJ 1193

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : K.A. Chitaley, Homi Daji and V.S. Pandit, for the Appellant; M. Adhikari, General, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.—This is a petition under Article 226 of the Constitution for a writ of certiorari to quash or set aside certain notices issued by the respondents for the recovery of excise duty payable under the Central Excises and Salt Act, 1944 (hereinafter called the ''Act) and also for a writ of mandamus Or other suitable writ, direction Or order requiring them not to give effect to those notices or to take other steps for fresh levies.

2. The petitioner has been manufacturing what is called French Polish and carrying on business in the name and style of Nadra Chemical and Pharmaceutical Works, of which he is the sole proprietor. It is not now disputed before us that the French Polish manufactured by the petitioner is a clear liquid giving test for denatured ethyl alcohol leaving a non-volatile residue, which on test is found to contain resin and shellae. It does not contain any pigment or nitro-cellulose and leaves, when coated on a plate of glass and left for sometime a transparent, adherent tack free film.

3. On 16th February, 1957, the Superintendent of Central Excise, Bhopal (respondent 2) sent to the petitioner a letter (Annexure A) to say that he was

manufacturing varnish which was an excisable commodity under the Tariff Item 22-11(i) of the First Schedule to the Act and that the manufactured goods could not be cleared from the factory without securing a licence in form L-4 and paying the duty on goods already cleared or sought to be cleared.

The petitioner was also directed to supply to the officer deputed for the purpose the figures of production, issue and stock available in the manufactory. On 20th February, 1957, a letter was sent to the Station Master, Bhopal, instructing him not to book the French Polish manufactured by the petitioner unless he produced a gate pass showing payment of the excise duty. On 9th March, 1957 and 22nd March, 1957, the petitioner was reminded that he had to take out a licence in form L-4 (Annexures B and C).

In the meantime, on 19th March, 1957, a summons (Annexure D) u/s 14 of the Act was issued to the petitioner. On 6th April 1957, he was intimated that unless he complied with the requirements of the Act, the authorities would be compelled to take action against him u/s 9 thereof (Annexure G). On 5th May, 1957, a notice of demand under Rule 9 (2) of the Central Excise Rules, 1944, was issued to him to ray Rs. 1,90,266/- as excise duty (Annexure H). On 15th May, 1957, a notice was issued to him to show cause why a penalty should not be imposed upon him for contravention of Rule 9 (2) of (sic) Rules (Annexure J). Yet another similar notice was issued to him for the alle ed removal of a stock of French Polish on 19th February, 1957, without payment of excise duty (Annexure K).

4. The reliefs claimed by the petitioner are based upon the following two grounds:-

(i) There was no notification under Sub-section (3) of Section 1 of the Act, which was therefore not in force in the erstwhile Part C State of Bhopal.

(ii) French Polish is not a taxable item under the Tariff Item No. 22 of the Act which levies tax on "pigments, colours, paints, enamels, varnishes, blacks and cellulose lacquers".

5. The respondents controverted the above-mentioned two grounds as follows:-

(i) The Act came into force on 28th February, 1944 vide Notification No/F. D. CR/ No. III-DC/ Excise of 26th February, 1944 It was exte ded to the Bhopal State by the Ministry of States Notification No. 135/J dated 6th June, 1949 issued in exercise of the powers conferred by section 4 of the Extra-Provincial Jurisdiction Act, 1947. This notification was published in the Bhopal Gazette dated 26th June, 1949.

(ii) French Polish is spirit varnish which is used for polishing furniture. It is included in Varnishes'' which, being Item 22 II (i) of the First Schedule of the Act, are taxable.

6. In regard to the first ground raised by the petitioner, it is not disputed that, by the Ministry of States Notification No 135/J dated 6th June, 1949, issued under

the Extra-Provincial Jurisdiction Act. 1947 (47 of 1947), the Act, as modified was extended to, and brought into force in the area covered by the erstwhile prince''y State of Bhopal. It is, however, urged that Sections 3 and 5 of the Merged States (Laws) Act, 1949 (59 of 1949), brought about a change. While Section 3 of Act 59 of 1949 extended the Act to the same area, section 5 of Act 59 of 1949 repealed the law corresponding to the Act as then in force in the area. The precise point raised is that after the Act was thus extended, it was not brought into force in that area in the manner provided by that Act.

7. The relevant provisions of Section 1 of the Act were as follows:-

"(2) It extends to all the provinces of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalt".

The words "all the provinces of India" were substituted for "British India" by the Adaptation Order, 1948. In our opinion, the provisions above set out contemplate only one notification for bringing the Act into force throughout the area in which it was intended to be in force. Once that notification was issued and the Act was brought into force in that area, the power of the Central Government to issue any notification in that behalf was exhausted. It is plain that as enacted, the Act did not postulate its extension to any other area either at once or from time to time.

That being the position the Act by which it was extended to the Bhopal area had itself to provide the manner in which it could be brought into force in that Area. This has been done by Section 3 of Act 59 of 1949 which provides that the Acts, Ordinances and Regulations specified in the schedule are "hereby extended to, and shall be in force in, all the new provides". Even otherwise, the power to issue a notification to bring an Act into force is a delegated power and the Legislature is competent to subsequently enact, when extending the Act to a new area, that it shall come into force immediately and so to take away the delegated power by necessary implication.

8. The petitioner''s learned counsel relied upon The State of Bombay Vs. Salat Pragji Karamsi, . That case is clearly distinguishable on facts because, in that case, the Bombay Prevention of Gambling Act (4 of 1887) was, with appropriate modifications applied to the Kutch area. That had the effect of merely extending the Act to the area and a notification was therefore required to bring it into force. In the instant case, as we have shown, the Act was not only extended but also simultaneously brought into force.

9. In our opinion, the second ground is also of no assistance to the petitioner. The dictionary meaning of the word varnish is as under:-

"(i) Oxford English Dictionary: Varnish: Resinous matter dissolved in some liquid and used for spreading over a surface in order to give this a hard shining, transparent coat, by which it is made more durable or ornamental.

French Polish -- A polish for woodwork. The smooth glossy surface produced on cabinet work by the application of this substance.

(ii) Chambers Twentieth Century Dictionary Varnish : A resinous solution that dries to give a glossy coat to a surface; a gloss or glaze; a specious show, an application of varnish.

French Polish : A varnish for furniture consisting chiefly of shellac dissolved in spirit.

(iii) Webster''s New International Dictionary:

Varnish : A more or less viscid liquid (usually a solution of resinous matter in an oil or a volatile liquid) which, when spread upon a surface dries either by evaporation or chemical action forming a hard lustrous coating capable of resisting more or less the action of air and moisture.

French Polish: A polishing preparation for woodwork, consisting of shellac with gum added, dissolved in alcohol.

(iv) Webster''s New World Dictionary:

Varnish : A preparation made of resinous substance dissolved in oil (oil varnish) or in a liquid like alcohol which evaporates quickly (spirit varnish) and used to give a glossy surface to wood, metal etc; any of various natural or prepared Products used for the same purpose.

(v) New Standard Dictionary :

Varnish: A resinous solution of certain gums or resins in alcohol, linseed-oil, or the like, used by painters cabinet-makers, etc. to produce a shining transparent, hard coat on the surface.

French Polish : A varnish for wood composed of shellac sometimes mixed with other gums, dissolved in alcohol : also the glossy finish produced by the use of the varnish.

(vi) Encyclopaedia Britannica (Vol. 22) :

Varnish: Varnish is a homogeneous organic composition which when thinly spread in liquid form, dries on exposure to air or to heat to a hard transparent film which decorates and protects the surface to which it is applied, the decorative effect is sometimes enhanced by incorporating soluble dyes or transparent pigments, to form colour varnishes; or varnishes may be used as the "vehicles'' or binders in opaque pigmented compositions; i,e., enamel or paint.

(vii) Encyclopaedia America (Vol. 27):- Varnish: A solution of gums or resin which is applied to the surface of objects to afford a glaze and protect the article so coated. Its use is largely decorative and applied to enhance the appearance of woodwork (furniture and house fittings) as it brings out the beauties of the grain and color of woods more distinctly and permanently and at less cost than the process of polishing, being applied with a brush as in painting. The ancient Egyptians were acquainted with the art of varnishing, but its origin appears to have arisen in the East. In India, China and Japan, the practice of lacquer work, a species of varnish application, was known at a very early date.

A practical varnish will cover the following requirements : It must be a homogeneous fluid or solution; must be fixed or permanent in effect as to tone of colour, transparency (or opaqueness), and must, on application in thin layers by brush or otherwise, dry within a short period by evaporation of its volatile solvents (alcohol, ether, benzine, spirits or turpentine etc.) leaving a film of smooth lustrous (sometimes purposely dull,), elastic oil and resin, impervious to its surrounding atmospheric conditions.

(viii) Thorne''s Dictionary of Applied Chemistry:

Varnish : There are very many different types of varnish made, and these include decorative varnishes for buildings, etc., with good durability on exterior exposure; varnish media for pigmentation into enamels, hard gloss paints, and finishes for decorative and industrial purposes; varnishes for electrical insulation for application to textiles--cloth and sleeving -- and for impregnation and protection of electrical equipment; anti-tracking varnishes designed to prevent the formation of carbon tracks on high voltage equipment; boat varnishes with good water resistance; floor and linoleum varnishes with abrasion--, water--, and alkali-resistance; silver and gold varnishes for the outside of tinned iron containers, often possessing special elasticity and adhesion to permit the formation of these containers by stamping from varnished sheet metal; varnishes for the interior of tinned-iron food containers with resistance to the action of hot water, steam, food acids, and organic sulpher compounds; varnishes to prevent tarnishing of brass and like metals; varnish stains for conferring both gloss and colour to raw wood; spirit varnishes for wooden articles, including polishes such as French polish; spirit paper varnishes for the decoration and preservation of labels, showcards, etc., other types of papervarnish with solvent and chemical resistance for bottle cap liners; a wide variety of adhesive varnishes for fixing cork seals, cardboard, paper, and transfers; seaming varnishes for sealing the seams of tinned iron and similar metal containers, with special solvent and chemical-resisting properties; mica sticking varnishes for the manufacture of mica sheets for insulating purposes; overprinting varnishes for printed Paper -- and Board; die-stamping varnishes; black varnish for the protection of iron work; cloth varnishes --impregnating, finishing and seaming -- for waterproofs and other protective clothing, with outstanding water-resistance and minimum tendency to deteriorate on storage; varnishes for sealing concrete and similar floors to prevent dusting; alkali-resisting varnishes to seal new concrete, cement or plaster to permit application of normal finishes; goldsizes; and wire enamels which although classified as such are really varnishes.

(ix) Rogers'' Manual of Industry Chemistry "Varnish : Varnishes are of two types - spirit and oleoresinous. A spirit varnish is a solution or dispersion of a resin or other film-forming substance in a volatile solvent. It dries by evaporation of the solvent. Certain synthetic types may require banking. Examples of spirit varnish are shellac and cellulose nitrate lacquer. An oleoresinous varnish is a solution of a mixture (usually cooked) of drying oils and resms in a volatile solvent. This varnish dries by evaporation of the volatile portion, followed by oxidation and polymerization of the residue. Examples are spar varnish and floor varnish."

It would appear from the meaning of the word that it is a generic name given to a homogeneous solution of gums or resins in alcohol, linseed oil or the like which is coated on various articles for protective or decorative purposes. French Polish is only a species, being a homogeneous solution in alcohol with the result that the volatile solvent evaporates quickly.

10. The argument of the learned counsel for the petitioner is that, for certain purposes, French Polish is the name given in the commercial world to a well known industrial production and that the omission of that name from the taxing statute disentitles the respondents to levy or collect any tax from the petitioner. In this connexion, we were referred to the distinction made between polishes and varnishes in certain Government of India publications, namely Import Trade Control Policy and Indian Trade Classification and also in the Indian Customs Tariff.

We find "Polish French" mentioned only in the Indian Trade Classification, which also names many kinds of varnishes. It is also true that the Central Railway Goods Tariff mentions separately French Polish but it also sub-divides varnishes and provides another rate for spirit varnish. We do not consider that the petitioner can derive much help from the way in which railway freight was fixed in regard to these articles.

It is well known that the nature and extent of the risk involved, ability to bear the freight, public utility and the general public policy are the governing considerations for classification of commodities for railway tariff which need not have any reference to the fact that any two commodities are of the same genus. In taxing statutes, which have to be construed strictly, it is the natural meaning at the word which must be adhered to. In the absence of any indication in the statute itself, it will not be reasonable to restrict that meaning only because a commodity clearly falling within its ambit is, for certain purposes, given another name in commerce. In our opinion French Polish is included In the word ''varnishes'' and is therefore taxable under the Act.

11. The only other point raised before us is that the Finance Act of 1955 operated from 1 April 1955 and thereunder tax could not be levied from 1 March 1955. In view of the provisions of the Provisional Collection of Taxes Act, 1931 (16 of 1931), the Finance Bill of 1955 authorised collection of the tax from 1 March 1955. Since this point was not pressed before us, we do not consider it necessary to dwell further on it.

12. In the view that we have taken of this case the petition fails and is

dismissed. The petitioner shall bear his own costs and pay out of the security deposit the costs of the respondents. Only one set of costs shall be allowed to the respondents. Counsel''s fee Rs. 100/-.

