

(1980) 08 CAL CK 0020
In the Calcutta High Court

Collector of Customs and Others

APPELLANT

Vs

Om Prokash Jalan and Another

RESPONDENT

Date of Decision : 12-08-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 19, 226
Customs Act, 1962 — Section 11
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1980 Cal 341 : 85 CWN 25

Hon'ble Judges : A.N. Sen, C.J;M.M. Dutt, J

Bench : Division Bench

Advocate : D.K. Sen and Mukti Maitra, for the Appellant;N.N. Gooptu, Tarun Roy for Respondent No. 1, Dipankar Gupta and P.R. Mondal, for the Respondent

Final Decision : Allowed

Judgement

1. I have had the benefit of reading the judgment to be delivered by my learned brother in this appeal. My learned brother has fully set out all the relevant facts in his judgment. In his judgment, my learned brother has also considered the arguments which were advanced from the Bar and also the various decisions which were cited in course of the arguments. In this judgment, I do not propose to reproduce the same. I am in entire agreement with the views expressed by my learned brother in his judgment.

2. The only question which falls for determination in this appeal is whether Argenti Nitras I.P. which is a drug and is recognized as such in Indian Pharmacopoeia, comes within item 55 in Part A of Schedule I to the Export Control Order. The said item No. 55 in Part A reads "Silver salt, Silver Chemicals and compounds with more than 50% silver contents". The goods listed in Part A are not normally allowed to be exported and they are commonly known as banned items. Item 55 was transferred to Part A on 30. 3. 79 and before that date was included in Part B of the Schedule under item 77(ii). It may be noticed that while good listed in Part A of Schedule 1 are not normally allowed to be

exported and are therefore usually called banned goods in the matter of export, the goods listed in Part B of the Schedule I are allowed to be exported on merits and on such terms and conditions as the authority concerned may choose to impose.

3. It is not in dispute in the instant case, as it cannot possibly be disputed that export of Argenti Nitras I.P. must be held to be banned and cannot be permitted in the instant case if Argenti Nitras I.P. comes within the purview of item No. 55. The case of the exporter who has filed the writ petition is that Argenti Nitras I.P. which is a drug and is recognized as such, cannot be considered to be a Silver Salt or a Silver compound within the meaning of Item No. 55. The substance of the argument of the exporter who has filed the present writ petition is that Argenti Nitras I.P. which is Silver Nitrate and is no doubt a Silver salt and a Silver compound, has to be refined and processed to become a drug and to be recognized as such in Indian Pharmacopoeia by the appropriate authority and Argenti Nitras which, as Silver Nitrate, was originally and initially a Silver Salt or a Silver compound, ceases to be so after the processing and refinement, as by virtue thereof it becomes a drug, and the drug so manufactured does not come within Item No. 55 and is freely exportable. It appears that this argument found favour with the learned trial Judge who allowed the writ petition holding that Argenti Nitras I.P. is a drug which did not come within the mischief of Item No. 55 in Part A of Schedule I to the Export Control Order.

4. The main contention of the appellant before us has been that in the matter of export of goods it is the duty of the Customs Authorities to find out and ascertain whether the goods sought to be exported, fitted in with the description of the goods which are listed in Part A or B of Schedule I, banning or restricting the export of such goods. It is the contention of the appellant that the goods sought to be exported by the Respondent fitted with the description of the goods now specified in Item 55 of Part A to schedule I which was previously in Part B Item 77 (ii). The substance of the argument on behalf of the appellant is that Argenti Nitras I.P. may be a drug and may be recognized as such but the said goods clearly come within the description of goods mentioned in Item No. 55 of Part I, as the said goods are undoubtedly Silver Salt or Silver compound with more than 50% Silver contents and the export of the said goods is prohibited.

5. As I have earlier observed the contentions raised on behalf of the parties in this appeal have been carefully considered by my learned brother in his judgment and my learned brother has also dealt with various cases which were cited from the Bar. The crux of the matter appears to be whether Argenti Nitras I.P. which is really refined Silver Nitrate and Silver Nitrate is undoubtedly a Silver Salt or silver compound, ceases to be so, when through process of refinement it becomes a drug and is recognized as such in Indian Pharmacopoeia.

6. It cannot be disputed that Silver Nitrate is undoubtedly a Silver compound or a Silver Salt. Silver compound and Silver Salt may have various kinds of uses. Silver Nitrate which is undoubtedly a Silver Salt or a Silver compound has various

kinds of uses. Through processing or refinement Silver Nitrate may be a drug and used as such and may be termed Argenti Nitras I.P. because it is so recognized as a drug because of the medicinal value by the Indian Pharmacopoeia. The fact, however remains that Argenti Nitras which through processing and refinement becomes a drug and is used as such and is also recognized by Indian Pharmacopoeia, does not cease to be Silver Nitrate which clearly remains a Silver Salt or a Silver compound with more than 50% Silver contents. Argenti Nitras I.P. which continue to be Silver Nitrate in spite of refinement must, therefore, be held to be a Silver Salt or compound with more than 50% Silver contents and the same clearly fits in with the description of goods listed in item No. 55 of Part A in Schedule 1 to the Export Control Order. It may also be noted that Item No. 55 which bans export of Silver salts, Silver Chemicals and Compounds with more than 50% Silver contents does not make any provision for any exclusion or exemption in case of any Silver Salt, Silver Chemicals and Silver compounds which may be used as a drug or be so recognized as a drug. The use of the goods has indeed nothing to do with the description of the same. If the goods sought to be exported fit in with the description of the goods listed in any item the export of which is banned or restricted, the export of such goods must necessarily be held to be banned or so restricted, whatever may be purpose of object of the export and whatever may be the nature of the use of the goods sought to be exported. In view of the description of the goods listed in Item No. 55 of Part A in Schedule I, export of Argenti Nitras I.P. which may be a drug and recognized as such, must be held to be banned as the goods sought to be exported clearly fit in with the description of the goods mentioned in the said item No. 55. If the Legislature had intended to exempt any particular kind of Silver Salt, Silver Chemicals or compound which fits in with the description of the goods mentioned in Item No. 55 from the operation of the ban on the ground of its use as a drug or otherwise, the Legislature would, undoubtedly, have said so.

7. The view that we have taken is also in agreement with the view expressed by a Division Bench of the Delhi High Court in the case of Nirmal construction and Finance Company and another vs. Union of India (Civil Writ 1038 of 1979) and also a Division bench of the Bombay High Court in the case Union of India -vs- Alok Exports (Appeal No. 338 of 1979), (both unreported). The decision of the Bombay High Court and the decision of the Delhi High Court are not, it is rightly contended by the respondent-petitioner, binding on this Court, though they are entitled to be considered with the highest respect. It is, also shares the same view. In a case of this nature the view expressed by this Court in conformity with the view of the Bombay High Court and the Delhi High Court will have the desirable effect of avoiding confusion and laying down a kind of uniformity in cases of this kind. With these observations, I agree with the order proposed by my learned brother.

M.M. Dutt, J.

8. This appeal has been preferred by the Union of India along with the Customs authorities and the Authorities of the imports and Exports against the judgment of a learned single Judge of this Court, making the Rule Nisi issued on the application of the respondents under Article 226 of the Constitution, absolute.

9. The Respondent No. 1 Om Prakash Jalan, is the proprietor of the firm M/s. Sunil & Company. The Respondent No. 1 and M/s. Sunil & Company, the Respondent No. 2, were both the petitioners in the writ petition on which the Rule Nisi was issued. The case of the respondents in the writ petition was, in short, that on the basis of the Exports policy for the year 1979-80 and Exports (Control) Order, 1977, they entered into a contract dated November 6, 1979 with one Kasner Limited, London for the sale and export of 15 metric tones of Argenti Nitras I.P. (Silver Nitrate I.P.). They received confirmation of the said contract from the foreign buyers namely, the said Kasner Limited, London as contained in their letter dated November 6, 1979. On January 1, 1980, the respondents through their shipping and clearing agent presented 10 shipping bills of an aggregate quantity of 9810 K. Gs. of Argenti Nitras I.P. for transport to the said Kasner Limited, London. It was the contention of the respondents that Argenti Nitras I.P. in respect of which the shipping bills were presented was drug and did not fall under part A or Part B or Schedule I of the Exports (Control) Order, 1977 and was, therefore, freely exportable. The Customs Authorities, however, did not allow the respondents to export the said quantity of Argenti Nitras I.P. on the ground that the same fell within the description of goods as mentioned in Item No. 55 of Part a of Schedule I of the Exports (Control) Order, 1977 of the Government of India, Ministry of Commerce and was therefore, a banned article Item No. 55 is in the following terms :

55. Silver salts, silver chemicals and compounds with more than 50 per cent silver content.

It is not disputed before us that Argenti Nitras I.P. that was sought to be exported by the respondents contained more than 50 percent of silver. The Customs Authorities disallowed the export of Argenti Nitras I.P. on the ground that it was silver compound with more than 50 per cent of silver and, as such, it came within Item No. 55 and was accordingly, banned. In the writ petition, the respondents have made some allegations of harassment alleged to have been made by the Customs Authorities, but in our opinion, those allegations are irrelevant for the purpose of this appeal.

10. Being aggrieved by the action of the appellants, the respondents moved this Court under Article 226 of the Constitution and obtained the Rule Nisi out of which this appeal arises. It was inter alia prayed by them for a declaration that the entry made in Item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977 was not applicable to the export of the drug "Argenti Nitras I.P.". They also prayed for a writ in the nature of Mandamus commanding the authorities concerned, who are the appellants before us, and their servants and agents to allow the respondents to export Argenti Nitras I.P. as per the contract

entered into by them with the said foreign firm.

11. The learned Judge considered the arguments made by the parties in support of their respective contentions and also the decisions cited at the bar. The learned judge took the view that Argenti Nitras or Silver Nitrate was no doubt a compound of silver, but when it was purified to the extent of 99.8% in accordance with the British pharmacopoeia (B. P.) or the Indian Pharmacopoeia (I. P.), it became a drug and ceased to answer the description of silver compound or silver salt as mentioned in Item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977. In the opinion of the learned Judge, after such purification, a new and different article comes into existence and it cannot be said to be a compound of silver or a silver salt. It has been found by him that such purified form of Argenti Nitras I.P. is not available in chemical markets where Argenti Nitras of lesser percentage of purification is sold. Argenti Nitras I.P. being a drug is only available in the pharmaceutical markets where pharmaceutical products are only sold. According to the learned Judge, therefore, Argenti Nitras and Argenti Nitras I.P. are two different articles, the former answers the description of silver compound or silver salt and the latter being wholly outside the said description does not fall within Item No. 55. In that view of the matter, the learned Judge made the Rule Nisi absolute. It was declared that the refusal by the authorities to allow the respondents to export Argenti Nitras I.P. pursuant to the contract entered into by them with the said foreign firm was illegal. It was directed that the respondents, upon their proving to the satisfaction of the appropriate officers that the goods in question were Argenti Nitras I.P., should be allowed to export the same under the shipping bills that were produced by them to the authorities concerned. The Rule Nisi was made absolute to the above extent. Hence this appeal by the authorities concerned.

12. Before we proceed to consider the respective contentions of the parties, it may be stated that elaborate arguments have been made before us by either party covering a number of days over a short and simple point, namely, whether Argenti Nitras I.P. is a silver salt, silver chemical or a silver compound within the meaning of Item No. 55 of Part A of Schedule I of Exports (Control) Order, 1977. In order to consider the said point, it is necessary to refer to certain statutory provisions and the Export Policy of the Government.

13. Section 3 of the Imports and Exports (Control) Act, 1947 as amended up to 30th April, 1979 provides as follows :

3. Powers to prohibit or restrict imports and exports - (1) the Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order :-

(a) the import, export, carriage coastwise or shipment as ships stores of goods

of any specified description;

(b) the bringing into any part of place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.

(2) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited u/s 11 of the Customs Act, 1962 (52 of 1962), all the provisions of that Act shall have effect accordingly.

(3) Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the Official Gazette, Prohibit, restrict or impose conditions on the clearance, whether for whom consumption or for shipment abroad of any goods or class of goods imported into India.

14. In view of section 3 of the imports and Exports (Control) Act, 1947 the Government of India, Ministry of Commerce, issued the Exports (Control) Order, 1977. Paragraph 3 (1) of the Exports (Control) Order, 1977 provides as follows :

3. Restrictions of exports of certain goods :-

(1) Save as otherwise provided in this Order, no person shall export any goods of the description specified in Schedule 1, except under and in accordance with a licence granted by the Central Government or by an order specified in Schedule II.

15. Under the Export Policy of 1979-80, Schedule I contains the list of commodities subject to export control. It is divided into two parts - part A and part B. Part A contains items, the export of which are not normally allowed. The articles which are contained in Part A are considered to be banned articles. Item No. 55 is placed under Particles. Item No. 55 is placed under Part A and commodities that have been mentioned in Item No. 55 are banned or prohibited commodities. The export of such commodities are not normally allowed. Part B contains commodities, the export of which are allowed on merits or subject to ceiling or other conditions to be specified from time to time. Under the Export policy of 1978-79, the articles mentioned in Item No. 77 (ii) of Part B of Schedule I. such inclusion under Part B meant that the commodities, namely, silver salts, silver chemicals and compounds with more than 50 per cent of silver content were exportable under licence to be granted by the Central Government. Under the Export policy of 1979-80, these articles have been banned and/or prohibited from being exported inasmuch as the same have been included in Item No. 55 under Part A of Schedule I. The policy of the Government has not been challenged. The Government is entitled to prohibit export of any commodity under its Export policy without assigning any reason.

16. Under the Export Policy of 1979-80 silver salts, silver chemicals and silver compounds are banned articles and cannot be exported. Argenti Nitras or silver nitrate (Ag No. 3) being a silver compound is a prohibited article and cannot be

exported. Mr. Dilip Kumar Sen, learned Counsel appearing on behalf of the appellants, has urged that Argenti Nitras I.P. being silver nitrate, may be of high percentage of purification, is nonetheless a silver compound or a silver salt and, therefore, comes within the description of the articles specified in Item No. 5 of Part A of Schedule I of the Export Policy 1979-80 corresponding to Item No. 77(ii) of Part A of Schedule I of the Export policy of 1978-79. It is submitted by him that Argenti Nitras I.P. may be used as a drug but so long as it does not cease to be a compound of silver or a silver salt, it continues to be a banned article.

17. On the other hand, Mr. Naranarayan Gooptu, learned Counsel for the respondents submits that in view of section 3 (1) (a) of the Imports and Exports (Control) Act, 1947, the Central Government has to specify the goods by description which are to be banned or on which restrictions are to be imposed both for the purpose of export and import. What have been described in Item No. 55 are silver salts, silver chemicals and compounds and not any drug. If it was the intention of the Government to prohibit the export of silver nitrate I.P. or B.P., in that case it could have been specifically mentioned in the list of banned articles. It is contended by him that as Argenti Nitras I.P. has not been included in the list of banned articles, it should be held that no restriction has been put on the export of the same. He has elaborated his argument in support of his contention by referring to the classifications made under the import policy, but before we refer to the same we may consider whether the expressions "silver compounds" and "silver salts" in Item No. 55 include, apart from any other considerations, Argenti Nitras I.P. or B. P.

18. There can be no doubt, when an article is prepared in accordance with the specification prescribed in the Indian Pharmacopoeia or in the British Pharmacopoeia, it is a drug. The Export Policy of 1979-80 does not contain any specification as "drug". If one goes by the list under Part A or Part B, one has to see whether any article comes within the description of any commodity specified under any item of Part A or Part B. Item No. 55 speaks of silver salts, silver chemicals and compounds with a silver content of 50 per cent or more. Silver nitrate is undoubtedly a silver compound or a silver salt. The question is whether Argenti Nitras I.P. is a silver compound or not. It is also not disputed that Argenti Nitras is the Latin name of silver nitrate. When silver nitrate is prepared and purified to the extent of 99.8% as prescribed in the Indian Pharmacopoeia, it becomes a drug. In other words, pure silver nitrate can be used as a drug. Even though it is used as a drug, it is silver nitrate and nothing else. Silver nitrate may contain certain impurities and, in that impure form, it is not strictly only a compound of silver, but it is a compound of silver plus some other articles, and when it is purified to the extent of 99.8%, that is, almost 100%, it is silver compound or silver salt and nothing else. When Item No. 55 refers to silver salts, silver chemicals and silver compounds, it will be unreasonable to think that these expressions only refer to impure forms of the same. Argenti Nitras I.P. being the purest form of silver nitrate is silver compound or silver salt in the true sense of

these terms. The chemical formula of silver nitrate is Ag. No. 3. Each molecule of Argenti Nitras I.P. is AG No 3. Therefore, if silver nitrate or AG No. 3 is a silver salt, silver chemical or silver compound, there can be no reason to think that Argenti Nitras I.P. which is also silver nitrate or AG No. 3. is not included within any of the said expressions. To accept the contention of the respondents would mean that an article should be understood in its impure form and not in its purified form, which is absurd.

19. It has been stated already that the learned Judge has taken the view that after silver nitrate is prepared and thereafter purified by certain chemical process to the extent of 99.8% a new substance comes into being, that is, Argenti Nitras I.P. which can be used as a drug. We are unable to accept this view of the learned Judge. It has been pointed out above that the purified form of silver nitrate is more a silver compound or a silver salt than the impure form of silver nitrate. We are not aware of any principle of law which lays down that the items referred to in the list under Part A or Part b of the Export policy of 1979-80 or for any other year should be interpreted with reference to the users of the articles specified in such lists. An article may have different uses, but what is banned is the article. Silver Nitrate may be used for different purposes. It is used in photography, chemical analysis, silvering mirrors, glass manufacture, hair dyeing, silver plating and as an antiseptic. It is not disputed that for certain chemical analysis 100% pure silver nitrate is used. We are, therefore, of the view that the true test is that when an article answers the description of a commodity as given in any item of such lists, it will come within the purview of the restrictions imposed on such article for the purpose of exports irrespective of the user of that article. It is true that u/s 3(1)(a) of the Imports and Exports (Control) Act, 1947, the goods have to be specified. Pursuant to the provision of section 3(1) (a), the Central Government has issued the Exports (Control) Order, 1977 putting restrictions on the exports of the goods as specified in the lists contained I schedule I. There can be no doubt that the goods which are not specified can be freely exported without any restriction. But as soon as it is found that a particular commodity can be identified with the description of any specified commodity in the lists, the restrictions imposed on such commodity will apply.

20. As it cannot be denied that Argenti Nitras I.P. is silver nitrate having a purification of 99.8% much endeavour has been made by Mr. Gooptu to persuade us to hold that the intention of the Central Government is to exclude the drugs from export restrictions. In other words, his contention is that if a specified commodity under the Exports (Control) Order, 1955 as amended upto 3rd May, 1979. Paragraph 3 of the Order inter alia provides that no person shall import any goods of the description specified in Schedule I, except under and in accordance with a licence or a customs permit granted by the Central Government or by any officer specified in Schedule II. Schedule I of Appendix 2 of the Order have been divided into sections. Each section is sub-divided into chapters containing the description of articles on which restrictions have been imposed. Chapter 28 is placed u/s VI. Chapter 28 includes, inter alia, metallic

salts, metallic chemicals, and compounds, both organic and inorganic, of precious metals. Chapter 30 includes pharmaceutical products. It is contended by the learned Counsel for the respondents that drugs have been treated separately under the heading "pharmaceutical products". Argenti Nitras I.P., it is submitted, comes under Chapter 30 under the category "pharmaceutical products". It has not been placed under Chapter 28 which includes metallic salts, metallic chemicals and compounds. So it is contended that whenever the Central Government intended to put restrictions on drugs or pharmaceutical products, the same has been specifically mentioned. It is urged that the classification that has been made under the Imports (Control) Order, 1955 should also apply to the lists of articles prepared under the Exports (Control) Order, 1977 for the purpose of ascertaining whether restrictions have been put on drugs or not. Counsel submits that, as such category of pharmaceutical products or drugs is absent from the lists prepared under the Exports (Control) Order, 1977, it should be inferred that pharmaceutical products or drugs have been excluded from being subjected to any restriction for the purpose of exports of the same. Our attention has also been drawn to the classifications made for the purpose of import replenishment under the Import Policy of 1979-80. The import replenishment scheme shows that "drugs and drug intermediates" have been made a separate category of export products in contradistinction with "chemicals and chemical products". On the basis of this classification under the import replenishment scheme, it is contended, the Central Government is always conscious of the distinction between chemicals which are drugs and Chemicals which are not drugs.

21. Prima facie, the argument is ingenious, but on a deeper probe into the matter it will be found that the argument has no legs to stand. In the first place, no analogy should be drawn from the Import policy of the Government for the purpose of interpreting the Export Policy. These two policies have been laid down by the Government under two different Orders; the Export Policy comes under the Exports (Control) Order, 1955. The Export Policy and the import Policy are two distinct policies of the Government and there cannot be any denying of the fact that the considerations which weigh with the Government for the purpose of laying down the Export Policy cannot be the same in laying down the Import Policy. It may be that there is necessity for making particular classifications under the Import Policy, but it will be quite unreasonable to adopt such classifications as incorporated under the Export Policy. It is not known to anybody what weighed with the Central Government to make a particular classification under the Import Policy. Mr. Dilip Kumar Sen, learned Counsel for the appellants has, however, thrown some light on the classifications that have been made under Chapter 28 and Chapter 30 of section VI under the imports (Control) Order, 1955. It has been pointed out by him that these classifications have been made for the purpose of the customs tariff so as to make the same consistent with such classifications as contained under the Customs Tariff Act, 1955. Schedule I of Appendix 2 of the Imports (Control) Order, 1955 contains

the following note at the very outset:

Note - Each heading number in Column (1) corresponds to the respective Chapter and heading number of the first Schedule to the Customs Tariff Act, 1975 (21 of 1975) and such entry in Column (2) has the same scope and meaning as the corresponding Chapter and heading of the said first Schedule.

22. We have verified the classifications from the Customs Tariff, Working Schedule, (Import, Exports & Cases) as on May 10, 1979. It appears that the classifications that have been made under the Imports (Control) order, 1947 are identical with the classifications made in the first Schedule of the Customs Tariff Act, 1976. the reason for such classifications is obvious. The goods which are allowed to be imported are liable to the payment of customs duty. So the classifications under the Customs Tariff have been adopted in preparing the lists of articles under the Imports (Control) Order, 1955. It will appear from the "Note" set out above that each entry has the same scope and meaning as the corresponding Chapter and heading of the first Schedule to the Customs Tariff Act, 1975. The corresponding Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 deals with pharmaceutical products. In that Chapter pharmaceutical products have been defined and explained. It provides inter alia that pharmaceutical products will also include "all goods falling in Chapters 28 or 29" Chapters 28 and 29 contain varieties of chemicals. Chapter 28 contains metallic salts and proxy salts of inorganic acids. Serial No. 28, 39 of Chapter 28 is "nitrates and nitrites" which includes silver nitrate. Thus the category "pharmaceutical products" includes even non-drug and chemicals. So, the classifications that have been made under the Import Policy of 1979-80 do not at all support the contention of the respondents that drugs have been treated to form a separate category, and that in the absence of such a category in the banned list under the Export Policy, it should be held that Argenti Nitras I.P. being a drug is entitled to be freely exported without any restriction whatever. Even assuming that under the Import Policy "drug" form a separate category, that will have no bearing on the interpretation of Item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977.

23. The learned Counsel for the respondents has placed reliance on the doctrine of ejusdem generis in order to substantiate the contention that silver nitrate as a drug has not been made the subject matter of any export restriction. Item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977 refers to "silver salts, silver chemicals and compounds with more than 50 per cent silver content". It is true that the word "compounds" is a general word following the particular words "silver salts" and "silver chemicals". It is submitted on behalf of the respondents that the expression "silver compounds" should be read ejusdem generis with the particular words - "silver salts" and "silver chemicals". The learned Counsel has placed reliance on the following observations in Craies on Statute Law, 7th Edition, pp. 182-83 :

General words following particular words.

In accordance with this principle of construction, it has always been held that general words following particular words will not include anything of a class superior to that to which the particular words belong. This was pointed out by Coke in *Archbishop of Canterbury's case* (1556) 2 Co, Rep. 46 a, where he says, as to 31 Hen. 8, c. 13 which discharged from payment of tithes all lands which came to the Crown by dissolution, renouncing, relinquishing, forfeiture, giving up, or by any other means, that this statute only discharged from tithes lands which came to the Crown by these or by any other inferior means, but did not discharge from tithes land which came to the Crown by virtue of an Act of parliament, "which is the highest manner of conveyance that can be." And in commenting upon the Statute of Westminster II [13 Edw. 1, c. 41] Coke says [2 Inst. 457] : "Seeing this Act beginneth with abbots and concluded with other religious houses, bishops are not comprehended within this Act, for they are superior to abbots and these words [other religious houses] shall extend to houses inferior to them that were mentioned before." Thus, in *Casher-v-Holmes*, [(1831) 2B. & A d. 592] it was held that the general words "all other metals" following the particular words "Copper, brass, pewter, and tin", in a local Act of 6 Geo. 4, cl. xx, did not include silver or gold, those latter metals being a superior kind to the particular metals mentioned in the Act.

24. The principle of law that has been set out above from *Craies on Statute Law* is well known and there is no dispute about the same. There cannot be any dispute that the expression "silver compounds" is a more general term than the other two expressions occurring in Item No. 55. The general expression follows the particular words "silver salt" and "silver chemicals". So, in view of the principle of law referred to above, silver compounds will not include anything of a class superior to that to which the particular words belong. In other words the expression "silver compounds" only "silver chemical". There can be no doubt that silver nitrate is a silver salt as well as a silver chemical. It is, however, contended by the learned Counsel that although silver nitrate is a silver salt or a silver compound, *Argenti Nitras I.P.* or silver nitrate I.P. cannot be brought within the expressions "silver salt" or "silver chemicals", for *Argenti Nitras I.P.* is a drug. It is submitted that silver salts and silver chemicals in Item No. 55 do not contemplate a silver salt or a silver chemical which is drug. We are unable to accept this contention. It is true that the words "silver compounds" are general words, but such general words should not be construed in the limited sense. We may, in this connection, refer to an observation of the Judicial Committee which has been quoted in *Craies on Statute Law*, 7th Edition, at page 183 : "It is a sound maxim of law" said the Judicial Committee in *Attorney General for Ontario -v- Mercer*, (1883) 8 A.C. 767 at p. 778, "that every word (in a statute) ought prima facie to be construed in the primary and natural sense. Unless a secondary or some limited sense is required by the subject or the context." That observation of the Judicial Committee can also be applied to the interpretation of the expressions occurring in Item No. 55. We do not find any reason why the expressions "silver compounds", "silver salts" and "silver chemicals" should be

given a narrow and limited meaning for the purpose of excluding from those expressions "silver nitrate I.P." used as a drug. It has been stated already that the articles specified in Item No. 55 therein have been banned irrespective of the users of the same. In our opinion, Argenti Nitras I.P. or silver nitrate I.P. is also included within the descriptions of the articles mentioned in Item No. 55. Thus it follows that even if we read the expression "silver compounds" ejusdem generis with the words "silver salts" and "silver chemicals", still silver nitrate I.P. is included within the general words "silver compounds" and also within the particular words "silver salts" and "silver chemicals". It is true that the general words should not be given a wider meaning than the particular words. But even without giving such wider meaning if any article comes within the purview of the particular words, it will be unreasonable to again narrow down the meaning of the particular words. In this contention made on behalf of the respondents that by applying the principles of ejusdem generis in Item No. 55, silver nitrate I.P. should be held to be excluded from the operation of that item.

25. It has been already observed that the user of the articles mentioned in Item No. 55 should not be taken into consideration in ascertaining whether a particular commodity falls within the description of those articles. In this connection, an argument has been made on behalf of the respondents, that user apart, the identification of a commodity with any article mentioned in Item No. 55 should be made with reference to the meaning attributed to the particular article in the Item or to the particular commodity as understood in common parlance. The inspiration for this contention seems to have been derived from a line of cases on taxing statutes where it has been held that the words of taxing statutes should be understood in accordance with the popular meaning of the words in trade or commerce. In taxing statutes generally an article is described by its name as understood in the trade or commerce or in common parlance. When it is described by a particular name, the Courts have held that in order to ascertain the article to which that name refers, the popular meaning or the popular acceptance of that name should be taken into consideration in identifying the article. In the instant case, Item No. 55 refers to the articles in scientific terms, to be precise, in terms of Chemistry. Any article, whatever may be its name in common parlance, if it has the same chemical composition as referred to in Item No. 55, will come within its purview. Argenti Nitras I.P. is a term of Chemistry and it is a silver compound or a silver salt. It is also a silver chemical. Argenti Nitras I.P. has no specific name in the trade or commerce and it is always understood as silver nitrate. It may be that Argenti Nitras I.P. is used as a drug, but as has been already stated. The user will be quite irrelevant for the purpose of Item No. 55. It is said that Argenti Nitras I.P. is known in the market as a drug and, as Item No. 55 does not refer to a drug, it will not include within it Argenti Nitras I.P. This contention is without any substance. In pharmaceutical market Argenti Nitras I.P. must be regarded as silver nitrate and nothing but silver nitrate, which is a compound or a salt or chemical of silver. Argenti Nitras I.P. itself points to the pure form of silver nitrate. It has been

already stated that "Argenti Nitras" is the Latin name of silver nitrate. If anybody wants silver nitrate he can get it from the pharmaceutical market. It is not in dispute that for certain chemical analysis 100% pure silver nitrate is required. The purpose of such chemical analysis can also be served by Argenti Nitras I.P. In our opinion, there is considerable force in the contention of Mr. Sen, learned Counsel for the appellants, that the interpretation of a word with reference to the popular acceptance of the same in the trade or commerce is applicable only to the interpretation of the words of fiscal statutes and not of regulatory statutes. In this connection, we may refer to a decision of the Supreme Court in *Dunlop India Ltd -v- Union of India*. AIR 1977 S.C. 597, which has been strongly relied on by Mr. Dipankar Gupta, learned Counsel appearing on behalf of the Respondent No. 2, M/s. Sunil & company of which the Respondent No. 1 is the proprietor. Mr. Gupta, while supplementing the arguments of Mr. Naranarayan Gooptu, appearing on behalf of the Respondent No. 1, submits that in view of the said decision of the Supreme Court in *Dunlop's case* (supra), we should hold that as Argenti Nitras I.P. is known as a drug in the trade or commerce and not as a silver salt, silver chemical or silver compound, it does not come within the purview of Item No. 55. We have already discussed this contention and we do not wish to repeat the same. In *Dunlop's case* referred to above the Supreme Court has laid down that in interpreting the meaning of words in a taxing statute the acceptance of a particular word by the trade and its popular meaning should commend itself to the authority. The same principle has been laid down in another decision of the Supreme Court in *State of Uttar Pradesh and Another Vs. Kores (India) Ltd.*, and in an earlier decision in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, In both these cases the principle was applied to fiscal statutes. The statute with which we are concerned is not a fiscal statute but a regulatory statute, namely, the Imports and Exports Control Act, 1977 and the Exports (Control) Order, 1977 made thereunder. In the circumstances, we are clearly of opinion that silver compound or silver salt will undoubtedly include Argenti Nitras I.P. It may be stated that the common parlance theory is applicable to the words of the statute. Silver salts, silver chemicals, and silver compounds are not understood in the trade or commerce or in common parlance in any other meaning or sense than convey as terms of Chemistry. Any chemical, whatever may be its use, if it be a silver compound or a silver salt or a silver chemical, it comes under the scope and purview of Item No. 55. For these reasons we reject the contention made on behalf of the respondents in this regard.

26. We may now consider certain decisions which have been relied on by the learned Counsel appearing on behalf of the respondents. Much reliance has been placed on an unreported judgment of the Supreme Court in *Jagannath Agarwalla -v- B. N. Dutta* in Civil Appeal No. 801 of 1964 disposed of on January 10, 1967. the appellant in that case obtained a licence for the import of drugs and medicines. Under this licence, he proposed to import Camphor B. P. (a derivative of terpene excluding preparations thereof) from Germany through a firm of

importers. The question that arose in the case was whether Camphor B. P. could be imported as the derivative of terpene under the licence for drugs and medicines. Schedule I of the Imports (Control) Order, 1955, at the relevant time, contained a list of articles which could be imported under a licence, to be granted by the Central Government. Serial No. 87 of the list referred to "Drugs and medicines, all sorts not otherwise specified in this Schedule" and Serial No. 131 to "Camphor". The question arose whether the licence granted to the appellant permitting the import of drugs and medicines, would also cover Camphor B.P., admittedly a derivative of terpene. It was contended on behalf of the authorities in that case, that as no licence was obtained by the appellant for import of Camphor as contained in Serial No. 131, he was not entitled to import Camphor B. P. under a licence for drugs and medicines. The Supreme Court referred to the relevant policy statement in respect of entries 87, 109, 131. Appendix XIX contained a list of drugs and medicines and pharmaceutical chemicals falling under Serial Nos. 87 and 109. One of the entries in the list of Appendix XIX was "Terpene and its derivatives excluding preparations thereof". It was, therefore, apparent that terpene and its derivatives were treated as drugs and were included within Serial No. 87, that is, "drugs and medicines containing spirit" in respect of which an import licence was granted to the appellant. The Supreme Court noticed the fact that natural Camphor is manufactured from Camphor Laurel (*Cinnamomum Camphora*) found in the Island of Formosa and in the neighboring regions of China and Japan. Camphor B.P. is synthetic Camphor manufactured from terpene and not a preparation thereof and is a standard pharmaceutical drug included in the current editions of Pharmacopoeias recognized under the Drugs Act, 1940. The Supreme Court, while holding that Camphor B.P. was covered by the licence granted to the appellant, observed as follows :

Camphor B.P. is a drug and a derivative of terpene and not a preparation thereof. Reading the licence with Serial No. 109 and Appendix XIX to the current Red Book, it would appear that the licence authorized the import of Camphor B.P. Had terpene and its derivatives not been included in Serial No. 109, It might have been possible to say that Camphor was not covered by Serial No. 109 as it fell within Serial No. 131. But as derivatives of terpene were specifically included in Serial No. 109 by Appendix XIX of the Red Book, we are inclined to hold that Camphor B.P. being a drug and a derivative of terpene fell within Serial No. 109 and the licence, fairly construed, authorized import of Camphor B.P.

27. It thus appears that as there was a specific item as "terpene and its derivatives", Camphor B.P. was held to come within that item and, consequently, under Serial No. 109. This decision of the Supreme Court, in our opinion, supports the contention of the appellants rather than that of the respondents. The test that was applied by the Supreme Court was whether Camphor B.P. was a derivative of terpene or not. As soon as it was found that it was derivative of terpene, it was held to be an article other than "Camphor" under Serial No. 131. In the instant case also, the test is whether Argenti Nitras I.P. is a silver

compound or a silver salt. As there can be no doubt that Argenti Nitras I.P. is a silver compound or a silver salt, it must be regarded as such and held to be a prohibited article coming under Item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977. Jagannath Agarwalla's case (supra) is, therefore, of no assistance to the respondents.

28. We may now refer to another decision of the Supreme Court in the State of Bombay -v- F. N. Balsara AIR 1951 S.C. 318, which has also been relied on by the learned Counsel for the respondents. In that case, the question was whether "liquor" included all liquids consisting of or containing alcohol. Section 12 of the Bombay Prohibition Act, 1944 inter alia provides that no person shall possess or sell or buy liquor and section 13 of the said Act provides inter alia that no person shall consume or use liquor. Under clause (a) of section 2(24) of the said Act "liquor" includes spirits of wine, mentholated spirits, wine, beer, toddy and all liquids consisting of or containing alcohol. It was contended on behalf of the State of Bombay that section 12 and 13 read with the definition of the term "liquor" as given the import and export across the customs frontier and purchase, possession, consumption and use of any stock of foreign liquor, eau-de-cologne, lavender water, medicated wines and medicinal preparations containing alcohol. The Supreme Court, after taking into consideration certain constitutional provisions, inter alia declared sections 12 and 13 of the said Act as unconstitutional and void in so far as the same affected the selling or buying or the possession of liquid medicinal and toilet preparations containing alcohol. In declaring the said provisions as void to the extent stated above, the Supreme Court noticed that there was a possibility of misuse of alcoholic medicines and perfumeries as intoxicating drinks. It was open to the Legislature to provide against perverted use of these articles but it was not open to it to prevent their legitimate use by citizens in infringement of their fundamental right to acquire, hold and dispose of property as provided in Art. 19(1)(f) of the Constitution. The said provisions of the Bombay Prohibition Act, 1944 were declared ultra vires on the ground that they were unconstitutional and not on the ground that "liquor" would not on the ground that "liquor" would not include medicinal and toilet preparations containing alcohol. The medicinal and toilet preparations did not contain 100% of alcohol; alcohol was used in those preparations as one of the ingredients. If any liquid contained 100% of alcohol and used as a medicine and also as an intoxicant, the prohibition would surely apply to such a liquid, for the same would be nothing but "liquor", though used as a medicine. Balsara's case (supra), therefore, does not lend any support to the contention of the respondents.

29. In A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, the only question that came up for consideration before the Supreme Court was whether a fountain-pen in which certain of its essential parts were gold or silver plated fell within Item No. 45(3) "fountain pen complete" or under item No. 61 (8) "articles plated with gold and silver", of the Schedule to the Tariff Act, 1934. It was held by the Supreme Court that it fell

within item 45(3) and not under item 61 (8) of the Schedule to the Tariff Act. This decision in our opinion, has no application to the facts of the case before us and, consequently, it is of no assistance to the respondents on whose behalf it has been relied on. Similarly, the decision of the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, also has no bearing on the question with which we are concerned. In that case, the question was whether the term "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales-tax Act would include "betel leaves" under item 36 of the said Schedule. It was observed that the legislature by using two distinct and different items had indicated its intention, *Ramavatar's case (supra)*, therefore, has no manner of application to the facts of the case before us.

30. In the case of *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, relied on by the respondents, the question that came up for consideration before the Supreme Court was whether the sale of goods manufactured out of "Iron and Steel" would be liable to payment of sales tax under the Central Sales Tax Act, 1956 when such tax was paid on "Iron and Steel" used for such manufacture. While holding that the sale of such goods were taxable, the supreme Court has observed that the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item in section 14 of the Central Sales Tax Act is that each item so specified forms a separate species for each series of sales although they may all belong to the genus : "Iron and Steel". Hence, if iron and steel plates are melted and converted into "wire" and then sold in the market, such wire would only be taxable so long as it retains its identity as a commercial goods belonging to the category "wire" made of either iron or steel. The mere fact that the substance or raw materials out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. Further, it has been observed that the object appears to be to tax sale of goods of each variety and not the sale of the substance out of which they are made. The case before us is not a sales-tax case, but a case under the Imports and Exports (Control) Act, 1947 which is a regulatory statute. No question of "separate specifications" or "variety" is involved in the instant case. *Argenti Nitras I.P.* has not been placed under a separate category or specification. When silver nitrate is a silver salt, silver chemical or silver compound, *Argenti Nitras I.P.* being silver nitrate is included with the and normal meaning of the said expressions contained in Item No. 55. *Argenti Nitras I.P.* is not made out of silver nitrate as wire is made out of iron and steel, but it is the same species "silver nitrate". *Malhotra's case (supra)*, therefore, does not lend any support to the contention of the respondents.

31. A similar question with which we are concerned in the present case, namely, whether *Argenti Nitras I.P.* falls within item No. 55 of Part A of Schedule I of the Exports (Control) Order, 1977 also came up before a Division Bench of the Bombay High Court in Appeal No. 338 of 1979 (*Union of India -v- Alok Exports*) and appeal No. 389 of 1979 (*Union of India v. Nirmal Exports*). Both the above

appeals were disposed of by a common judgment dated February 4, 1980 by the Division Bench of the Bombay High Court setting aside the judgment of Pendse J. The learned Judge (Pendse) J. held that Argenti Nitras I.P. being a drug did not fall within Item No. 77 (ii) of Part B of 2nd Schedule of the Exports (Control) Order, 1977 under the Export Policy 1978-79. The Division Bench took a contrary view and held that even though Argenti Nitras I.P. was used as a drug, it was silver nitrate, that is, a compound of silver and it came within the purview of Item No. 77 (ii). In the instant case, the learned trial Judge has, however, placed reliance on the judgment of Pendse J and has differed with the view taken by the Division Bench of the Bombay High Court. In the view which we have taken, we respectfully agree with the judgment of the Division Bench of the Bombay High Court that Argenti Nitras I.P. comes within the description of silver salts, silver chemicals or compounds.

32. A Division Bench of the Delhi High Court in *Nirmal Construction and Finance Co. -v- Union of India* in Civil Writ No. 1033 of 1979, has also taken the same view, as we have taken, that Argenti Nitras I.P. comes within the description of articles mentioned in Item No. 77 (ii) of Part A of Schedule I of the Exports (Control) Order, 1977 under the Export Policy 1978-79. We are not impressed by the arguments made on behalf of the respondents why we should take a view different from that taken either by the Division bench of the Bombay High Court or by the Division Bench of the Delhi High Court in the decisions referred to above. These decisions, therefore, support the view which we have taken.

33. It is contended by Mr. Dilip Kumar Sen, learned Counsel for the appellants that tones of silver nitrate are being attempted to be exported to foreign countries as Argenti Nitras I.P. It is submitted by him that the object of such exports is not for the purpose of user of Argenti Nitras I.P. as a medicine. The real object behind such export, submits Mr. Sen, is that Argenti Nitras I.P. which is silver nitrate will be used for purpose other than the purpose of it being used as a medicine. It is also submitted by him that the object might also be to extract silver from Argenti Nitras I.P. which is pure silver nitrate. He submits that silver nitrate is a caustic and corrosive substance and is used as an antiseptic. It is contended by him that it is surprising that for such limited use as a drug such a huge quantity of silver nitrate I.P. should be exported for the purpose of the same being used as an antiseptic. He submits that the real motive for the exports of the huge quantity of silver nitrate I.P. is anything by the user of the same as a medicine. We do not think that we are called upon to decide the contentions as made on behalf of the appellants. We are only concerned with whether silver nitrate I.P. is a banned article or not. It has been found by us that it is a banned article.

34. Before we part with this appeal, we may notice another contention of Mr. Gooptu, learned Counsel for the respondents. He has drawn our attention to the exports statistics for the year 1968-69 to 1971-72 to show that Argenti Nitras I.P. was allowed to be exported by the Central Government in those years. It is

contended by him that if it were a banned article or if the Central Government has considered that the object of such exports was not for the purpose of Argenti Nitras I.P. to be used as a medicine, it would not have allowed the same to be exported. This argument is fallacious. Under the Exports I.P. was not a banned article and, as such, the exports were permitted. But under the Exports Policy of 1979-80, it is a banned article. It, therefore, shows that in banning or prohibiting silver salts, silver chemicals and compounds under Item No. 55, the Central Government really banned Argenti Nitras I.P. for the same was allowed to be exported in the years 1968-69 to 1971-72. No material has been placed before us on behalf of the respondents to show that apart from silver nitrate I.P., silver nitrate was also exported in those years so that it might have supported the contention of the respondents that the articles which have been banned under Item No. 55 included only silver nitrate and not silver nitrate I.P. This is also another fact which supports the contention of the appellants that Argenti Nitras I.P. falls within Item No. 55 and that is also the intention and the Policy of the Central Government. No other point has been urged on behalf of either party.

35. For the reasons aforesaid, we set aside the judgment of the learned Judge, discharging the Rule Nisi and dismiss the writ petition. The appeal is allowed with costs assessed at 100 Gold Mohurs.