(1966) 12 AHC CK 0008

In the Allahabad High Court

Case No : Misc. S.T.R. No. 469 of 1964

Industrial Gases Ltd.	APPELLANT
Vs	
Commissioner, Sales Tax	RESPONDENT

Date of Decision : 06-12-1966

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 3A

Citation : (1968) 21 STC 124

Hon'ble Judges : S.C. Manchanda, J;M.H. Beg, J

Bench : Division Bench

Advocate : S.N. Kakkar, for the Appellant; The Standing Counsel, for the Respondent

Judgement

S.C. Manchanda, J.—This is a case stated u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as the Act). The question referred is :

Whether the oxygen so prepared is a chemical liable to be taxed u/s 3-A at the rate of 0-1-0 anna per rupee or it is a medicine liable to be taxed u/s 3 at a reduced rate ?

2. The material facts are these : The assessee manufactures, inter alia, oxygen gas and also welding apparatus and stores and sells them. The assessee prepares the oxygen by the industrial process known as fractional distillation of liquid air. In other words air is first liquified and then the other gases are allowed to escape and pure oxygen is obtained. The oxygen so produced is sold by the assessee for purposes of welding metals and also for the use of medicinal purposes in the treatment of pneumonia, bronchitis etc. There is no material on the record as to what quantity was sold for medicinal or welding purposes. The total turnover of gases which include acetylene gas was Rs. 3,92,384.67 nP. It was claimed that gases manufactured were not chemicals and therefore did not fall to be taxed at single point under item 7, "chemicals of all kinds", of the Notification No. ST-905/X, dated 31st March, 1956. This claim was rejected and the gases were assessed at the rate of 0-1-0 anna per rupee as provided in the

said notification. On appeal, the Judge (Appeals) accepted the contention of the assessee and held that (1) oxygen was an element and had no chemical action on other things, and (2) that it is used for medicinal and welding purposes. He, therefore, was of the view that it was not a chemical but an unclassified item assessable u/s 3. The department took the matter up in revision and the Judge (Revisions) allowing the revision held that (1) oxygen can be prepared by chemical process; (2) it is used in chemical operations, and therefore, it can be classified as a chemical. In this view of the matter he did not consider it necessary to go into the question as to the use to which oxygen could be put, i.e., whether as a chemical as such or for medicinal purposes. Hence, this reference at the instance of the assessee.

3. The short question that falls for consideration is whether (1) oxygen is a chemical, and (2) though a chemical yet, if it also falls under another list where the incidence of tax is less, can that other list also be taken into consideration ?

4. The words used in item 7 of the said notification are indeed very wide. They are "chemicals of all kinds". The intention apparently was to leave out no chemicals from this list. The question, however, is as to what is a chemical? Now when the word "chemical" is used in a taxing statute with which commercial men have to deal with, it may not always be right to give the technical or dictionary meaning thereof. The meaning of such words requires to be such as is commonly understood by commercial men who use such articles. If strictly technical meaning is given to the word "chemicals" then perhaps many substances such as coal, sugar, salt, salt-petre etc. would satisfy the meaning and be assessable at single point and not under the general classification. Unfortunately, in the present case there is no evidence as to what meaning commercial men attribute to the word "chemicals." Therefore, there is no alternative but to go to the dictionary meaning of the word. In Shorter Oxford English Dictionary, Vol. 1, the word chemical means "relating or belonging to chemistry; obtained by chemistry. A substance obtained or used in chemical operations." In Webster''s Third New International Dictionary, the meaning given is "relating to applications of chemistry : as acting or operated by chemical means or synthesized from chemicals : suitable for use in or used for operations in chemistry : having reference to or relating to the science of chemistry.

5. There cannot be the slightest doubt that oxygen satisfies the dictionary meaning. It certainly is a substance which relates or belongs to chemistry. The first thing probably every student of elementary chemistry learns is the preparation and properties of oxygen. It is a gas which can be obtained by chemistry. It is also a substance which is obtained or used in chemical operations. Oxygen combines with various metals to form oxides. Oxygen has a definite formula and it has a definite industrial and medicinal use. "It is used in blowpipes with hydrogen, coal gas and acetylene for welding and cutting metals. It is used in some industrial processes and medicinally in cases of pneumonia and gas poisoning, and mixed with nitrous oxide, ether vapour or other

anaesthetic. Some carbon dioxide is often mixed with the oxygen, as this stimulates breathing, and carbon dioxide is also used in cases of poisoning and collapse for restoring respiration. Liquid oxygen mixed with powdered charcoal has been used as an explosive."-vide, Inorganic Chemistry by Partington. Therefore, whether the assessee produces oxygen by the industrial process or fractional distillation of liquid air, the fact remains that oxygen can be produced by chemical process and it can undergo chemical action and produce chemical changes in other substances. It is therefore difficult, if not impossible, to escape from the conclusion that it is a chemical.

6. A chemical, however, can also be a medicine and, therefore, merely arriving at the conclusion that oxygen is a chemical will not answer the question as framed. The second limb of the question is whether oxygen manufactured by the assessee is a chemical or a medicine. The learned Judge (Revisions) has in framing the question considered that medicines would fall to be assessed u/s 3, that is, under the general classification. There is, however, a Notification No. ST-3504/X, dated 10th May, 1956, which again is one issued under the powers conferred by Section 3-A of the U.P. Sales Tax Act, 1948, and which provides for a reduced rate of tax at the rate of three pies per rupee in respect of medicines or medicinal preparations. A chemical when sold as a medicine and used for medicinal purposes will qualify for the lower rate of taxation. Therefore, in a case such as this where part of the oxygen was sold for industrial purposes and the other for medicinal purposes it was necessary to apportion the turnover and assess it accordingly.

7. The view that we are taking is supported by a decision of this Court in Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax, Uttar Pradesh [1963] 14 S.T.C. 184. In that case the question was as to whether the turnover of zinc oxide and red lead by the manufacturers of glassware was "chemical" or "dyes and colours". It was there held :

If an article is sold as an article belonging to one category it must be treated as a sale of an article of that category even though it answers the description of another category. The Legislature has fixed different rates of taxation for different categories according to certain principles it has in mind. If a colour is sold it charges sales tax on it at a certain rate, whereas if a chemical is sold it charges sales tax at a higher rate. If an article though capable of being used as a colour is sold as a chemical, it would be more in consonance with the legislative intention to assess sales tax on it as a chemical. When a question is put ''what was sold by the assessee ?'', it would be truer to say that he sold a chemical than to say that he sold a colour. If an article is capable of being used as a chemical and also as a colour, the answer to the question what he sold would depend upon how it was treated by the vendor. If he stocked and sold it as a chemical, it would be a chemical sold by him and more so if it was bought by the vendee also as such...

8. In the instant case, it appears that some of the oxygen was sold for industrial

purposes where the intention of Government would be to charge higher tax and some for medicinal purposes where obviously the intention is to assess at the lower rate on humanitarian grounds.

9. For the reasons given above the question is answered by saying that oxygen is a chemical and it will be taxed at 0-1-0 anna per rupee when sold for industrial purposes and at three pies per rupee when sold for medicinal purposes. Reference is answered accordingly; but in the circumstances of the case the parties are left to bear their own costs.