

(1974) 10 BOM CK 0008
In the Bombay High Court
Case No : Special Civil Application No. 373/70

Jagdish D. Dengvekar

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 14-10-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 53, 9
Constitution of India, 1950 — Article 14

Citation : (1978) 2 ELT 581

Hon'ble Judges : Talzapurkar, J; Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By this special Civil Application petitioner Jagdish D. Dengvekar is seeking to quash or set aside the order passed by Superintendent, Central Excise, Poona II Divn. on 26/27th April 1968 whereby the Superintendent, Central Excise, levied excise duty Rs. 566.44 on the petitioner for manufacturing French Polish between March 1964 and May 1965 and further excise duty of Rs. 228.21 for having manufactured French Polish between June 1965 and April 1966 and further levied penalty of Rs. 5/- for breach of Rule 9 and penalty of Rs. 2/- for breach of Rule 53, which order levying excise duty as well as penalty was confirmed by the Collector of Central Excise on 3rd September, 1969.

2. A few facts leading to the petition may be stated. In January, 1963 the petitioner made an application for licence to manufacture French Polish and also for a permit for denatured spirit. It appears that he wanted to start a manufacturing concern in his factory at Poona and for that purpose he made the aforesaid application in January 1963. On 4th March, 1964, a licence as well as permit asked for were granted. The licence obviously was to manufacture French Polish, Varnish and Thinners. It appears that the petitioner went on manufacturing French Polish without complying with the provisions of the Central Excises and Salt Act, 1944 and the Rules framed thereunder. On 23 December,

1965 the Inspector, Central Excise, Poona visited its premises and he noticed a unit licensed for the manufacture of French Polish Operating in the premises. He also found that the petitioner had not maintained accounts required under Rule 53 of the Central Excise Rules, 1944. It was further noticed that he had manufactured a quantity of 2,360.20 litres of French Polish during the period March 1964 to May 1965 and had cleared it without payment of duty. The petitioner's statement was recorded by the Inspector. Later, on 24th February, 1966 a show cause notice was issued to the petitioner calling upon him to show cause why duty and penalty should not be levied on him. Curiously enough the petitioner made a representation to the Collector which he termed as an Appeal whereby he challenged the proposed levy of duty as well as penalty on the ground that what he had manufactured was French Polish and the same did not constitute Varnish within the meaning of item "Varnish" contained in Tariff Item 14 (II)(i) of the Central Excise Tariff under which Varnish was liable to excise duty. The said item runs as follows :-

"II. Varnishes and blacks-

(i) Varnishes".

and then follow the rates at which the excise duty is payable. The collector rejected his representation on 28th February, 1966. The petitioner carried the matter further by way of revision to the Central Board of Excise & Customs and the Central Board by its letter dated 16th March, 1967 rejected the revision. Against the order of the Central Board of Excise the petitioner preferred further application to the Government of India, Ministry of Finance (Department of Revenue and Insurance), New Delhi on 3rd June, 1967, which application was rejected by the Government of India on 11th June, 1968. It may be stated that levy of duty as well as penalty was challenged by the petitioner in these proceedings adopted by him against the show cause notice on three grounds : (1) that no excise duty was leviable because the French Polish was not covered by item of Varnishes ; (2) that in the case one Mr. Sharma, who was manufacturing French Polish, exemption had been granted from levy of excise duty and as such the petitioner was discriminated against ; and (3) then certain notification which was issued on 6th July, 1963 in which a distinction was sought to be made between manufacturers of Varnishes who had owned their factories prior to 6th July, 1963 and those who owned such factories on and after 6th July 1963 was discriminatory. All these grounds were negatived and the Government of India rejected the petitioner's application dated 3rd June 1967 on 11th June, 1968. Thereafter, the Superintendent, Central Excise, by his order dated 26/27th April, 1968 levied the excise duty of Rs. 566.44 for the manufacture of French Polish between March 1964 and May 1965 and further excise duty of Rs. 228.21 for the manufacture of French Polish between June 1965 and April 1966 and penalty of Rs. 5/- and Rs. 2/- for breaches of Rules 9 and 53 respectively of the Central Excise Rules, 1944. Against this order of the Superintendent Central Excise, imposing excise duty as well as penalty the petitioner preferred and

appeal to the Collector of Central Excise, Poona, on 1st July, 1968 but the Collector of Central Excise rejected the appeal on 3rd September, 1969. . It is these two orders passed by the Superintendent, Central Excise on 26th/27th April, 1968 and the Collector of Central Excise on 3rd September, 1969 that are being challenged by petitioner by the present writ petition filed under Articles 226 and 227 of the Constitution.

3. The respondent have resisted the petition on several grounds by filing an affidavit in reply of one N.D. Khosla, Deputy Collector of Central Excise, on 14th June, 1971. Apart from raising preliminary objection to the maintainability of the petition on the ground of laches as well as on the ground of non-exhaustion of remedies available to him under the Act and Rules framed thereunder, the respondents have denied several submissions and contentions made by the petitioner on merits. It has been contended that French Polish has been rightly held to be included in the item of "Varnishes" in Tariff Item 14 (II)(i) of the Central Excise Tariff and the levy of duty as well as penalty on the petitioner was perfectly justified in respect of manufacture of French Polish indulged in by him without complying with the provisions of the Act and the Rules. It is further denied that the case of Sharma in respect of whom exemption has been granted is similarly situated as that of the petitioner and as such the charge of discrimination is vehemently denied. The notification dated 6th July, 1963 is also justified on the ground that classification of manufacturers of French Polish in two groups, those who owned their factories prior to 6th July, 1963 and those who owned their factories on and after 6th July, 1963 is made on rational basis and as such there was no discrimination as suggested by the petitioner.

6. On merits also we do not think that the petitioner has made out a case for getting the relief which he has sought. On merits three points have been raised by Mr. Rege before us and we shall deal with them seriatim. In the first place, Mr. Rege contended that the item which was manufactured by the petitioner was French Polish and according to him, French Polish could not be regarded as falling within the concept of Varnishes, which is the item mentioned in item 14 (II) (i) of the First Schedule of the Central Excise Act. He contended that French Polish and Varnishes were two distinct items and the one could not be regarded or classified as falling within the concept of "Varnishes". But the Excise authorities have taken a contrary view and we do see any reason why that view should be disturbed. After all the correct test in interpreting any item mentioned in the First Schedule to the Central Excise Act is to see the commercial sense in which the item is understood or the sense in which traders or persons dealing in that item understand it and not the technical or scientific sense. The principle of proper construction of items occurring in statute like Sales Tax Act has been laid down by the Supreme Court in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, , where the Supreme Court has observed as follows :

"This court has firmly ruled that in finding out the true meaning of entries mentioned in a Sales Tax Act, what is relevant is not dictionary meaning but how

these entries are understood in common parlance, specially in commercial circles. Sales Tax primarily deals with dealers who are engaged in commercial activity. Therefore, what is of the essence is to find out whether in commercial circles, paddy is considered as identical with rice."

7. We are of the view that French Polish will have to be regarded as one of the species of Varnishes as it was not disputed before use that both French Polish as well as Varnishes are substances used for the purpose of giving a polish or gloss to surfaces of articles of furniture or things like that. The Central Government when it rejected the petitioner's representation dated 3rd June, 1967 has clearly observed as follows :

" "French Polish" is a solution of Shellac in denatured spirit. Based on this chemical composition, it is rightly classifiable as "Varnish" falling under Item No. 14 of Central Excise Tariff."

This would show that even on the basis of chemical composition French Polish could be regarded as properly classified under Item "Varnishes".

8. It may be stated that the question as to whether French Polish could be included in the item "Varnishes" directly arose for consideration before the Madhya Pradesh High Court in the case of Akhtar Abbas Vs. Asst. Collector, Central Excise and Others, and the Madhya Pradesh High Court has taken the view that French Polish could be classified as Varnish. The relevant headnote runs as follows :-

" "Varnish" 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 preventive or decorative purposes. French Polish is only a species, ing a homogeneous solution in alcohol with the result that the volatile be solvent evaporates quickly.

In taking statutes, which have to be construed strictly, it is the natural meaning of 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, French Polish is included in the word "varnishes" and is, therefore, taxable under item 22 of the Act."

In view of this position it seems to us clear that the Central Government was justified in taking the view that French Polish was included in the Tariff Item 14 (II)(i) of the Act and the said decision cannot be interfered with.

9. The next contention of Mr. Rege was one of discrimination. In the first place, he contended that the notification that was issued by the Central Government on 6th July, 1963 whereunder the manufacturers of Varnishes were divided into two groups, those who had owned their factories prior to 6th July 1963 and those who owned their factories on and after 6th July, 1963, was discriminatory and violative of Article 14 of the Constitution. His contention was that there was not rational or intelligible basis for making such classification of manufacturers of

Varnishes by reference to a particular date. In the affidavit in reply which has been filed on behalf of the respondents the basis of the notification and classification made thereunder have been sufficiently explained in para 9 thereof. It has been pointed out that notification dated 6th July, 1963 was issued with a view to prevent fragmentation of factories manufacturing French Polish with the object of evading payment of legitimate duty, the exemption at the time being conditioned by the quantum of French Polish manufactured by the factory in the financial year. It has been further pointed out that an additional object was to protect the interests of the existing manufacturers who could not have visualised the new restriction imposed with effect from 6th July, 1963. It was on this basis that classification based on starting of the business before and after a particular date has been sought to be justified as being reasonable and we see no reason as to why the basis given in the said para should not be accepted as rational basis for classification of manufacturers by reference to that date. The second aspect of plea of discrimination was that if the case of the petitioner was compared with the case of one Mr. Sharma, who was also a manufacturer of French Polish, the petitioner could be said to have been discriminated against, for, according to petitioner, Mr. Sharma had been granted exemption from payment of excise duty. Now here the admitted facts are that Mr. Sharma had commenced his manufacturing factory of French Polish long prior to 6th July, 1963 whereas admittedly the French Polish in January 1963 was granted licence on 4th March, 1964, with the result that the petitioner could be said to have commenced manufacturing French Polish thereafter. Therefore, the case of Mr. Sharma and that of the petitioner cannot be said to be similarly situated. Obviously, the exemptions that was granted to Mr. Sharma was not the basis that he was a manufacturer of French Polish long prior to 6th July, 1963. The two cases being not identical, the plea of discrimination must fail.

10. In the result, we feel that there is no substance in the petition even on merits.

Rule is, therefore, discharged with costs.