

(1991) 07 GUJ CK 0028
In the Gujarat High Court
Case No : Sales Tax Reference No. 3 of 1985

J.G. Bavishi and Sons

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52

Gujarat Sales Tax Act, 1969 — Section 49, 49(2), 5, 62, 69

Citation : (1991) 07 GUJ CK 0028

Hon'ble Judges : S.D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Rekha M. Doshi, Assistant Government Pleader for H.V. Chatrapati and Co., for the Respondent

Judgement

S.D. Dave, J.—The undermentioned three questions have been referred to this High Court by the Sales Tax Tribunal, Ahmedabad, acting u/s 69 of the Gujarat Sales Tax Act, 1969 :

"(1) Whether in the facts and circumstances of the case, the Tribunal is justified in holding that the sale of "water for injection" evidenced by applicant's Bill No. 1-12-80/81 dated May 9, 1980, is covered under entry 26(1) of Schedule II, Part A to the Gujarat Sales Tax Act, 1969 and not under entry 13 of Schedule I to the said Act ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the previous determination order dated March 25, 1964, passed by the learned Deputy Commissioner in the case of M/s. Sarabhai Chemicals of Baroda, u/s 52 of the Bombay Sales Tax Act, 1959, had no finality for all the time to come and in holding that the said earlier determination order could not be accepted as binding on the Sales Tax Department ?

(3) If answers to the above questions are in the affirmative, whether in the facts and circumstances of the case, the Tribunal is justified in holding that the Deputy

Commissioner had rightly exercised the discretion in not giving prospective effect to his order of determination u/s 62 of the Gujarat Sales Tax Act, 1969, in the case of the applicant ?"

2. The assessee M/s. J. G. Bavishi & Sons is a firm dealing in drugs and medicines at Rajkot and is a dealer registered under the Gujarat Sales Tax Act, 1969. The assessee had preferred an application to the Deputy Commissioner, Sales Tax, Rajkot, u/s 62 of the Act for the purpose of determination of a question as to whether any tax was payable on the sale of "water for injection" sold by it to Civil Hospital, Amreli, under bill dated May 9, 1980 and if so, what should be the rate thereof. It was the case of the said assessee in the said application that the said sale was covered under entry 13 of Schedule I to the Act and hence no tax whatsoever was payable on the said sale by virtue of section 5 of the Act. The entry 13 read as follows at the relevant time :

"13. Water (other than aerated, mineral, medicinal or tonic water.)"

3. The Deputy Commissioner, Sales Tax, by his orders dated October 25, 1981, held that the abovesaid sale was covered under entry 26(1) of Schedule II, Part A to the Act and therefore the sale in question was exigible to the tax at the concessional rate provided under entry 83 of the Government Notification dated April 1, 1976, issued u/s 49(2) of the Act. The said entry 26 is in the following terms :

"26. (1) Drugs and medicines (other than those specified in entry 12 in Schedule I and entry 96 in this Schedule)."

4. The entry 83 of the Government notification reads thus :

"83. Sales or purchases of drugs and medicines as specified in the appendix below when such drugs and medicines are used for consumption in the State of Gujarat."

5. Aggrieved by the abovesaid determination order passed by the Deputy Commissioner, Sales Tax, the assessee had preferred the appeal before the Tribunal which was registered as Appeal No. 24 of 1981, which was decided on December 27, 1982. During the course of the hearing of the appeal it was contended on behalf of the assessee before the Tribunal that "water for injection" was nothing but "water" or "distilled water" which would be covered under entry 13 of Schedule I to the Act. It was also further contended before the Tribunal that there was a previous determination order dated March 25, 1964, passed by the Deputy Commissioner u/s 52 of the Bombay Sales Tax Act, 1959, in the case of M/s. Sarabhai Chemicals of Baroda. In that determination order it was stated that the distilled water in ampoules would be water and it would be tax-free under entry 50 of Schedule A to the Bombay Sales Tax Act, which would be equivalent to entry 13 of Schedule I to the Gujarat Act of 1969. Relying upon the abovesaid determination order it was contended on behalf of the assessee that the said determination order was also an interpretation by the department and

as such it should have been normally accepted. While rejecting the abovesaid two contentions raised by the assessee, the Tribunal had observed that the determination order passed by the Deputy Commissioner earlier, might be followed by the subordinate authorities but it did not mean that it had a finality for all the time to come. The Tribunal has also observed that there was a Government notification in respect of "water for injection" providing the concessional rate of tax within the ambit of entry 26 of Schedule II, Part A to the Act and that the abovesaid notification had come into force with effect from April 1, 1976. In view of this position the contentions raised by the assessee could not be accepted by the Tribunal. Later on the assessee had submitted the necessary application to the Sales Tax Tribunal, Ahmedabad, for making a reference to this Court, and accordingly, the abovementioned questions have been referred to this Court.

Question No. 1 :

6. Mr. R. D. Pathak, the learned counsel appearing on behalf of the assessee has urged that the Tribunal was in error in coming to the conclusion that the commodity in question namely, "water for injection" would not fall within the tax-free entry No. 13 of Schedule I to the Act. It is the contention of Mr. Pathak that entry 13 is in respect of water exclusive of aerated, mineral, medicinal or tonic water and that, at any rate the water for injection would not fall within the abovesaid excluded categories of water. It is also the contention raised by Mr. Pathak that even otherwise, water for injection would fall within the meaning of water as understood under entry 13 of Schedule I to the Act. The abovesaid contention as raised by Mr. Pathak has come to be combated by the learned counsel Ms. Doshi appearing for the Revenue. It has been urged on behalf of the Revenue that in the instant case also the test applicable would be the known test of "popular parlance". The question raised by the Revenue is as to whether any customer, consumer or a seller would ever accept water as "water for injection". The same question which could be placed in a different manner is as to whether any consumer or a customer who goes out in the market for the purpose of purchasing "water for injection" would ever receive or obtain water. It has been the contention raised by Ms. Doshi appearing on behalf of the Revenue that such would never be the position. The principle regarding the popular parlance came to be pronounced way back in the year 1961 by the Supreme Court in the classic decision of *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer* [1961] 12 STC 286. In this decision it has been made abundantly clear by the Supreme Court that the entries in a taxing statute like the Sales Tax Act must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It is also pointed out that the popular sense meaning would be "that sense which people conversant with the subject-matter with which the statute is dealing would contribute to it". It was also pointed out by the Supreme Court that it should be necessary while understanding a class of commodity falling within a particular entry, the meaning which is being given to the abovesaid commodity and which is generally being understood in common

parlance. As stated above the abovesaid enunciation has come from the Supreme Court of India way back in 1961.

7. The latest decision on this point appears to be the Supreme Court decision in *Plasmac Machine Manufacturing Co. Pvt. Ltd. Vs. Collector of Central Excise, Bombay*, . In this decision also while considering certain entries falling under Central Excises and Salt Act, 1944, the Supreme Court has stated that while interpreting the item in taxing statutes resort should not be to scientific and technical meaning of the terms or expressions but it should be to the popular meaning. This principle has been elaborately discussed by the AIR SC 1003, at para 15 of 112-113 of STC). It has been pertinently pointed out that in interpreting the items of the statutes like the Excise Act or the Sales Tax Act, whose primary object was to raise revenue and for which purpose to classify diverse products, articles and substances, resort should be had, not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. It therefore becomes clear that the same principle came to be reiterated by the Supreme Court in the year 1991, which was enunciated way back in 1961.

8. During this period between 1961 - 1991 there are numerous decisions on this point. It would be out of place to have a reference to all the decisions rendered by the Apex Court of the Nation during this period. But nonetheless the reference can be made to certain decisions on this point. In *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, , the same view has been taken by the Supreme Court. It has been stated that while interpreting the items in the statutes like the Sales Tax Acts the resort should be not to the scientific or the technical meaning but resort should be to the popular meaning or the meaning attached to them by those dealing in them. The same principle came to be pronounced by the Supreme Court once again in *Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills*, . In *Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow*, again the same principle has been elaborately discussed and made clear by the Supreme Court. It has been stated very clearly that the words used in a taxing statute should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is to be applied or is in force. In *Collector of Central Excise v. Parle Exports (P.) Ltd.* [1989] 75 STC 105; 1988 4 JT SC 454 once again the Supreme Court has stated that the words used while imposing taxes or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In *Collector of Central Excise v. Krishna Carbon Paper Co.* : AIR 1988 SC 2223 : [1989] 72 STC 280; the Supreme Court has stated that when the word has a scientific or technical meaning and also an ordinary meaning according to the common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. Therefore from the abovesaid pronouncements made by the Supreme Court it is clear that while appreciating

the entry under the taxing statute that meaning is to be accepted which is being accepted by the people who are conversant with the commodity in the area in which the law is in force, or in which the law is to be applied. Viewing the contention raised by Mr. Pathak in the light of the above said decisions it becomes clear that the contention raised by the assessee in this respect cannot be accepted. Firstly it can never be accepted that "water for injection" would be water simpliciter, falling within the tax-free entry 13 of Schedule I to the Act. No customer or a consumer who is in need of water for injection would go to the place where water simpliciter is available. The consumer, producer and the seller would be clear in their respective minds when water for injection is talked of. Therefore the contention raised by the assessee that water for injection would fall within the tax-free entry No. 13 being water simpliciter cannot be accepted. As noticed above entry 13 of Schedule I to the Act of 1969, excluded certain waters like aerated, mineral, medicinal or tonic water. It has been urged that the water for injection would never fall within the abovesaid excluded categories of water. It is true that the commodity under consideration can never be said to be aerated, mineral or tonic water, but nonetheless it should be the medicinal water. The Tribunal has taken the view that though water for injection might not be a medicine or drug by itself, it is being used for the medicinal purpose. It cannot be disputed or denied that water for injection would be used for diluting the medicinal preparation which would be in a thick liquid form or some time in the powder form also. The water for injection would always be utilised for the medical treatment and therefore it can be said without any hesitation that it would be a medicinal water. This position becomes clear by applying the abovesaid principles of popular parlance enunciated by the Supreme Court of India way back in the year 1961 and reiterated up to the year 1991. In view of this position it becomes clear that the Tribunal was perfectly justified in coming to the conclusion that the commodity in question, namely water for injection would not fall within the tax-free entry 13 of Schedule I to the Act as urged by the assessee. In view of this position the question No. 1 requires to be answered in the affirmative, against the assessee and in favour of the Revenue.

Question No. 2 :

9. The Tribunal had taken the view that the determination order dated March 25, 1964, passed by the Deputy Commissioner, Sales Tax, on the basis of the application made by M/s. Sarabhai Chemicals of Baroda, saying that distilled water in ampoule would be falling within the tax-free entry under the Bombay Sales Tax Act, 1959, would have no finality for all the time to come. The Tribunal had also taken the view that the earlier determination order could not be accepted as binding on the Sales Tax Department for all the time to come. With a view to appreciate the question referred to us it requires to be reiterated that M/s. Sarabhai Chemicals, Baroda, has submitted the necessary application u/s 52 of the Bombay Sales Tax Act, 1959, for the determination of the question as to whether the distilled water in ampoule would fall within the tax-free entry. On the material that was made available to the Deputy Commissioner at the relevant

time by the assessee the determination was to the effect that the abovesaid commodity would be a tax-free item. The contention therefore raised by the assessee before the Tribunal and before us is that when there was a previous determination order dated March 25, 1964, there should not have been any scope for the second determination in which the orders came to be passed on October 25, 1981. It is sought to be urged that in view of the previous determination order of March 25, 1964, the order or the decision or the determination made by the determining authority would be final. The same contention has been raised by the learned counsel Mr. Pathak appearing on behalf of the assessee before us. In support of the contention of the assessee reliance has been sought to be placed on the Supreme Court decision in Commissioner of Sales Tax v. Super Cotton Bowl Refilling Works [1989] 73 STC 61. Our pointed attention has been drawn to the observations made by the Supreme Court at page 71, which is to the effect that the very language of the section which enjoins a decision by the Commissioner envisages that the decision is quasi-judicial or judicial and can never be characterised as an administrative order. These observations of the Supreme Court at page 71 therefore puts the question regarding the nature of the determination order beyond any controversy whatsoever. It has got to be accepted that the determination orders being pronounced by the competent authority under the sales tax legislation would be quasi-judicial or judicial orders and can never be said to be the administrative orders. But the controversy before us is slightly different. The question is as to whether when once the decision has been rendered by the Deputy Commissioner, Sales Tax, in the determination proceedings, can it be said that it would be binding in other assessment proceedings in other matters also. Naturally one would like to obtain the answer of the abovesaid question from the Supreme Court decision which says that the determination orders are quasi-judicial or judicial in nature. But it appears very clearly that the Supreme Court had thought it fit to say that they were not concerned in the appeals with the abovesaid question. To quote the words employed by the Supreme Court it has been stated as under :

"Whether that decision will be binding on other party and what will be the effect of the decision of the Commissioner of Sales Tax in pending assessment proceedings is another matter and we are not concerned in these appeals with that question."

10. Looking to the abovesaid observations made by the Supreme Court it becomes clear that the Supreme Court has not stated anything regarding the binding nature or otherwise of the orders to be pronounced by the Deputy Commissioner in determination proceedings. In Doma Sao Mohanlal v. State of Bihar [1971] 27 STC 473, it has been stated by the Supreme Court that each assessment period is a distinct one and therefore the decision in respect to one assessment period cannot operate as res judicata in respect of another period. It has been pointed out that the decision of the High Court on a writ petition in relation to the assessment year 1949-50 could not be relied on in relation to the

recovery proceedings for periods ending March 31, 1947, since each assessment period was distinct, and any decision of the authorities declaring liability to tax could not operate as res judicata in respect of another period. A decision of the Bombay High Court which has taken the view, which we are going to take in this matter is in Commissioner of Sales Tax v. Halward Engineers [1978] 41 STC 61. It appears that, firstly there was the determination order dated January 31, 1962, saying that the reduction gears would fall within entry 20 of Schedule C to the Bombay Sales Tax Act, 1959. The entry was substituted by Maharashtra Act 21 of 1962. The second and subsequent determination application was submitted by another assessee and the orders were pronounced on July 10, 1965, saying that the abovesaid article or commodity would fall within entry No. 22 of Schedule E. The Tribunal had held that the Sales Tax Officer was right in saying that the commodity would fall within entry No. 22. The Tribunal also held that the assessee was entitled to the benefit under the orders dated January 31, 1962 up to July 10, 1965. Reversing the abovesaid decision rendered by the Tribunal the Bombay High Court has stated that the Tribunal was not correct. It was pointed out that though the determination order was in existence, which was the result of previous determination proceedings, there was the subsequent determination order which was also based upon the substitution of certain provisions of the Act. Here also it requires to be appreciated that the previous determination order was dated March 25, 1964. The second determination order is dated October 25, 1981. Meanwhile the Government notification came into existence with effect from April 1, 1976.

11. Looking to the abovesaid decisions, though it requires to be accepted that the determination order cannot be branded or characterised as administrative order, the second determination proceedings would always be open. It has also been pointed out by the Supreme Court as noticed above in the case of Doma Sao Mohanlal [1971] 27 STC 473 that each assessment period is distinct and decision in one cannot operate as res judicata in respect of another period. Looking to this position it becomes clear that the Tribunal was justified in coming to the conclusion that the determination order dated March 25, 1964, passed by the Deputy Commissioner in the case of M/s. Sarabhai Chemicals of Baroda u/s 52 of the Bombay Sales Tax Act, 1959, had no finality for all the time to come. In view of this position this question also requires to be answered and replied in the affirmative, against the assessee and in favour of the Revenue.

Question No. 3 :

12. The Tribunal has reached the conclusion that the Deputy Commissioner had rightly exercised the discretion in not giving prospective effect to its orders of determination u/s 62 of the Gujarat Sales Tax Act, 1969. It requires to be appreciated that the Tribunal has stated that the effect should be given with effect from April 1, 1976, that is the date of Government notification under which the concessional rate has been provided to the commodity in question. It cannot be urged that because there was a previous determination order dated March 25,

1964, the Tribunal or the Deputy Commissioner should have said that so far as the assessee is concerned it would be governed by the previous determination orders dated March 25, 1964. At any rate with effect from April 1, 1976, the Government notification had come into existence. It appears that this notification was required to be issued by the Government in view of the recommendations made by the Hathi Committee and certain drugs and medicines, etc., considered as essential drugs were required to be treated separately. These drugs have been shown in the appendix annexed to the Notification dated April 1, 1976 available at Part-I-B-87 in the work known as "Compilation of Notifications" u/s 49 of Gujarat Sales Tax Act, 1969 (Act No. 1 of 1970), Volume I, by Mr. M. C. Padia. It therefore becomes clear that a special treatment was given to the commodity in question, namely "water for injection" as entry 83 in the abovesaid Notification with effect from April 1, 1976. It appears that the Tribunal was justified in coming to the conclusion that the Deputy Commissioner was right in not giving the prospective effect to his orders. It is clear that at any rate the changed effect ought to have been given to the commodity from the date of notification that is from April 1, 1976. This question therefore also requires to be replied and answered in the affirmative, against the assessee and in favour of the Revenue.

13. We therefore hereby accordingly answer and reply all the abovesaid three questions in the affirmative, against the assessee and in favour of the Revenue, with no order as to costs.

14. Reference answered in the affirmative.