

(1978) 12 GUJ CK 0005
In the Gujarat High Court

Case No : Sales Tax Reference No. 10 of 1978

Mercury Pharmaceuticals Industries

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(3)

Gujarat Sales Tax Act, 1969 — Section 13, 16, 16(1), 6, 67

Citation : (1979) 43 STC 301

Hon'ble Judges : P.D. Desai, J; B.K. Mehta, J

Bench : Division Bench

Advocate : S.L. Modi, for the Appellant; G.T. Nanavati, for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Desai, J.—In this reference made at the instance of the assessee u/s 69 of the Gujarat Sales Tax, 1969 (hereinafter referred to as "the Act"), the Gujarat Sales Tax Tribunal (hereinafter called "the Tribunal") has referred the following question for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the levy of purchase tax u/s 16 of the Gujarat Sales Tax Act, 1969, on the purchases of glass ampules made against declaration in form 19 was justified on the ground that such ampules were neither raw materials, processing nor consumable stores used in the manufacture of goods for sale ?"

2. The assessee herein is a manufacture of pharmaceuticals. Amongst the pharmaceutical products manufactured by the assessee are included various kinds of injections. The injectible liquid medicine, after it is prepared, is required to be filled in glass ampules made of special glass. The assessee does not manufacture such ampules but purchases them. After those ampules are properly washed and subjected to sterilisation, the injectible liquid medicine is poured into them without touch of human hand. The tops of the ampules are thereafter automatically sealed. This entire integrated process of manufacture of

injectible liquid medicine and filling and sealing it in glass ampules takes place in the plant of the assessee under expert supervision because extreme care has to be taken to ensure against any contamination.

3. During the assessment period from 1st April, 1971, to 31st March, 1972, the assessee purchased glass ampules worth Rs. 12,174.44 against certificates in form 19. In the course of proceedings for the assessee's assessment of sales tax, the Sales Tax Officer held that, contrary to the certificate, certain percentage of the glass ampules purchased by the assessee was used for another purpose, namely, for manufacture of non-taxable goods, since the manufactured product (injections) to the extent of that percentage, was not sold within the State but it was sold on consignment basis outside the State. The Sales Tax Officer thereupon levied purchase tax u/s 16 on that portion of the purchase price of the glass ampules which was relatable to the ampules consumed in the manufacture of injections sold on consignment basis.

4. It appears that upon scrutiny of the assessment proceedings of the assessee, the Assistant Commissioner of Sales Tax prima facie entertained the view that since the glass ampules purchased against the certificate were used as containers of the injectible liquid medicine manufactured by the assessee, they could not be said to have been used as raw or processing materials or as consumable stores in the manufacture of goods for sale and that, therefore, there was contravention of the declaration made in the certificate in form 19. The Assistant Commissioner of Sales Tax thereupon issued a notice in exercise of the powers conferred upon him u/s 67 to the assessee to show cause why purchase tax u/s 16 should not be levied on the purchase price of the remaining lot of glass ampules purchased under the certificate. The assessee showed cause. After giving to the assessee a reasonable opportunity of being heard, the Assistant Commissioner of Sales Tax revised the order of the Sales Tax Officer and he levied additional purchase tax in the sum of Rs. 973.92.

5. Against the aforesaid order of the Assistant Commissioner of Sales Tax the assessee preferred a revision application before the Tribunal. The Tribunal, upon an appraisal of the process of manufacture and after taking into consideration certain decided cases, concurred in the decision of the Assistant Commissioner of Sales Tax and dismissed the revision application. At the instance of the assessee, however, the Tribunal has stated a case in respect of the question set out above.

6. It is necessary to set out at the outset the material finding recorded by the Tribunal. The Tribunal held that in the instant case "the finished product is the injectible liquid medicine that goes into the body of a patient through its muscles or veins" and that such being the case "glass ampules can by no stretch of imagination be considered as raw materials". The Tribunal reinforced this conclusion by observing that it was common knowledge that the injectible material does not go into the body of the patient along with ampules and that, therefore, ampules cannot be considered as raw materials used in the manufacture of injections. The Tribunal then proceeded to consider the question

whether the glass ampules can be treated as consumable stores. According to the Tribunal, consumable stores, properly so-called, are goods which are consumed in the process of manufacture of finished product. Therefore, the finished product in the instant case not being the injection along with the ampule but only the injectible liquid medicine, the glass ampules could not be considered to be consumable stores. The Tribunal appears to have been of the view that in order that the injectible liquid medicine manufactured by the assessee could be properly preserved and conveniently transported and properly marketed, ampules were absolutely necessary. However, on that account they could not be categories as consumable stores because "ampules are used after the manufacture of injectible liquid medicine is complete which is ready for filling in and the ampules are used for filling in such injectible liquid medicines", which showed that "ampules are used after the manufacture of the finished product is complete". It is on the basis of this approach and reasoning that the Tribunal arrived at the decision which it reached.

7. Purchase tax is leviable u/s 6 read with section 16(1), inter alia, where any dealer has purchased any taxable goods under a certificate given by him u/s 13 and contrary to such certificate the goods are used for another purpose. u/s 13(1) (B), the certificate which a recognised dealer has to given in the prescribed form must contain a declaration that the goods other than prohibited goods sold to him are goods purchased by him for use by him "as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale" by him. The prescribed form 19, inter alia, requires a recognised dealer to certify "..... that the goods purchased by me will be used by me as raw/or processing materials or consumable stores in the manufacture of taxable goods for sale". It is apparent on a perusal of these provisions that before purchase tax becomes leviable u/s 16(1) what has to be established, inter alia, is that the goods purchased against the certificate are not used as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale. In the context of the facts of the instant case, at least three things are required to be established for the application of section 16(1) : (1) that the glass ampules were purchased by the assessee against certificate in form 19; (2) that the purchase was for use as raw or processing materials or as consumable stores in the manufacture of injections; and (3) that the manufactured product, namely, the injections, were taxable goods for sale. We are not concerned herein with the satisfaction of the first and last condition because about that there is no dispute. The controversy centres round the satisfaction of the second condition which really involves the fulfilment of two independent prerequisites.

8. Let us first ascertain as to what is the precise connotation of the expression "use in the manufacture". In J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , the question which arose for decision under the Central Sales Tax Act, 1956, inter alia, was as to what was the meaning to be ascribed to the expression "in the manufacture or processing of

goods for sale" in section 8(3)(b) of the said Act. In that context, the Supreme Court made the following observation :

"The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression "in the manufacture of goods"."

9. Giving an illustration based on the manufacture of cotton textiles, it was observed as follows :

"For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various process before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls dyed, calendered and pressed. All these processes would be regarded as integrated processes and included "in the manufacture" of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior processes as goods used in the manufacture of cloth."

10. Having given the aforesaid illustration, the Supreme Court proceeded to make the following further observations :

"In our judgment, if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods, intended for use in the process or activity as specified in rule 13 will qualify for special treatment

The expression "in the manufacture" takes in within its compass all processes which are directly related to the actual production"

11. In a recent case decided by this Bench, Vasuki Carborundum Works v. State of Gujarat ([1979] 43 S.T.C. 294.) (Sales Tax Reference No. 13 of 1976 decided on 17th November, 1978), the question for consideration was whether kathi (twine) purchased and used by the assessee, who was a manufacturer of crockery and carborundum, for packing of goods for sale could be regarded as an item of consumable stores in the process of manufacture of goods for sale. My learned brother, who spoke for the Bench, referred to the decision in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, and observed that, in the ultimate analysis, the question whether the goods in question, namely, kathi, were required as consumable stores in the manufacture of taxable goods for sale had to be answered by considering whether the said goods were used as consumable stores in a process or activity which was integrally connected with the manufacturing activity and without which the activity of manufacture would be commercially inexpedient. Applying the said test, it was found that kathi was consumable stores because it was necessarily

required in the activity of marketing of the goods, which is essentially connected with the larger activity of manufacture. Undoubtedly, not all the articles or materials which may facilitate the activity of manufacture in that expanded sense could be classified as consumable stores. Goods such as those required for ornamental packing of the manufactured goods like the attractive boxes in which the manufactured goods are sometimes packed so as to make them easily salable in the market cannot ex facie be called "consumable stores". No straight jacket formula can, however, be laid down as to which articles or materials can be said to be required in a process or activity, which though not strictly a manufacturing activity itself, is such an integral part thereof that in its absence the manufacturing activity might not be commercially expedient. It would all depend on the facts and circumstances of each case and the question will necessarily be decided on the evaluation of the part played by the goods in question in the process of manufacture as understood according to the test laid down in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, .

12. From these two decisions, one principle clearly emerges and it is that the phrase "use in the manufacture" is not to be given a narrow and constricted meaning and that it would take in the entire process carried on by a manufacturer with a view to converting raw materials into finished goods and that if any particular process is so integrally connected with or related to the ultimate manufacture of goods that without that process or activity, manufacture, even if theoretically possible, would be commercially inexpedient, goods required in that process would fall within the expression "goods used in the manufacture of goods".

13. Applying the aforesaid test for the resolution of the question herein, namely, whether glass ampules could be said to have been used in the manufacture of injections, the only answer which can be possibly given is that they are so used. It is a matter for common knowledge that the medicine which is to be injected into the body of a human being is not sold in a loose condition. It cannot possibly be so sold not only on account of the difficulty of storage, transport and preservation but also because the injectible medicine would not be safe for administration unless it is poured and sealed into an ampule or some such or similar container so as to ensure against contamination. What is sold in the market as injection is not the injectible medicine manufactured in the liquid form by a pharmaceutical manufacturer; what is sold is the injectible liquid medicine contained in a glass ampule or in a similar container. The former cannot exist independently of the latter. Indeed, the injectible liquid medicine, unless it is poured and sealed into the glass ampule or any other suitable container, cannot safely leave the plant in which it is manufactured. It is difficult to conceive of the manufacture of any variety of injection being complete without the injectible liquid substance being poured and sealed into a glass ampule. The manufacture of injections is not even theoretically possible, let alone the commercial expediency aspect of the matter, without the use of glass ampules. The

conclusion is, therefore, inevitable that glass ampules must be held to have been used in the manufacture of injections.

14. The question then is as to whether the glass ampules are used as raw or processing materials or as consumable stores in the manufacture of injections. It is not possible to hold that glass ampules constitute the processing materials. The only category into which glass ampules can possibly fall is raw materials or consumable stores. Neither of these terms is defined in the Act and we must, therefore, adopt the common parlance test to comprehend the meaning. Adopting the said test, it appears to us that glass ampules can be properly called raw materials which are essential for the manufacture of the finished product, namely, injections. Any person conversant with the process of manufacture of injections will be inclined to look upon glass ampules as that material without the use of which the injectible liquid medicine cannot be said to have attained the character of the finished product, which is marketed for administration as a drug. Indeed, as earlier observed, the injectible liquid medicine cannot possibly leave the plant unless it is poured and sealed into a glass ampule. If this be the role which glass ampules play in the manufacture of injections, they can be properly classified as raw materials used in the process of manufacture of injections. It requires to be recapitulated in this connection that though glass ampules are manufactured elsewhere and they are purchased by the assessee, they are subjected to the process of washing and sterilisation so as to immunise them against atmospheric contamination and that the glass ampules so processed are fed into the plant so that the injectible liquid medicine gets poured into them and they are automatically sealed without the touch of human hand. Having regard to the process to which glass ampules have to be subjected before their use and the actual role which they play in the manufacture of injections, we are of the view that they can be properly treated as raw materials used in the manufacture of injections.

15. The Tribunal in taking the contrary view fell into a basic error, namely, that it treated the injectible liquid medicine itself as the finished product. In taking this view, the Tribunal was obviously in the wrong, as the foregoing discussion would disclose. The fact that the ampules have not to be injected into the body of a patient to whom the injection is to be administered has no relevance whatsoever in judging whether an injection could be said to have been manufactured unless the injectible liquid medicine is poured and sealed into the glass ampule. The dichotomy which the Tribunal has made by considering the injectible liquid medicine as distinct from the glass ampules into which they are poured and sealed is artificial and unrealistic. In our view, therefore, the Tribunal erred in law in holding, in the instant case, that purchase tax was leviable on the purchase of glass ampules used in the manufacture of injections which were sold by the assessee locally and not on consignment basis.

16. In the result, we answer the question referred to us in the negative, that is to say, in favour of the assessee and against the revenue. The State of Gujarat

will pay the costs of this reference to the assessee.

17. Reference answered in the negative.