
(1993) 01 GUJ CK 0002
In the Gujarat High Court
Case No : Sales Tax Reference No. 4 of 1988

Quality Chemicals	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52
Gujarat Sales Tax Act, 1969 — Section 18, 19A, 45(6), 69

Citation : (1993) 01 GUJ CK 0002

Hon'ble Judges : M.B. Shah, J;C.V. Jani, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Y.F. Mehta, Assistant Government Pleader, instructed by H.V. Chhatrapati, for the Respondent

Judgement

M.B. SHAH, J.—The Gujarat Sales Tax Tribunal has referred, u/s 69 of the Gujarat Sales Tax Act, 1969, the following questions for our decision :

(1) Whether, in the facts and circumstances of the case, it is established that the sales of maleic resins made by the applicant were covered under entry 61 of Schedule II, Part A or entry 13 of Schedule III to the Gujarat Sales Tax Act, 1969 ?

(2) Whether, in the facts and circumstances of the case, the order of determination passed on May 29, 1964, by the Deputy Commissioner of Sales Tax (Appeals), Gujarat State, Ahmedabad, u/s 52 of the Bombay Sales Tax Act, 1959, in the case of Synthetic and Polymer Industries of Ahmedabad would be automatically binding on the Sales Tax Officers and Assistant Commissioners of Sales Tax while assessing the other dealers including the applicant, even on the assumption that the said case was correctly decided ?

(3) Whether, in the facts and in the circumstances of the case, the Tribunal was not justified or right in law in appreciating the evidentiary value of all the documents produced and relied on by the applicant and in recording its findings

thereon ?

2. At the time of hearing of this matter, Mr. R. D. Pathak, learned advocate appearing on behalf of the applicant, submitted that the first question requires to be reframed because before the Tribunal it was contended by the applicant that the product, namely, maleic resins would be covered by entry 9 of Schedule II, Part A and not that the said product would be covered under entry 61 of Schedule II, Part A to the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Sales Tax Act"). The learned Assistant Government Pleader also agrees with the said submission. Hence, the first question referred by the Tribunal is reframed as under :

"Whether, in the facts and circumstances of the case, it is established that the sales of maleic resins made by the applicant were covered under entry 9 of Schedule II, Part A or residuary entry 13 of Schedule III to the Gujarat Sales Tax Act, 1969 ?"

3. The aforesaid reference arises out of the decision rendered by the Tribunal in Second Appeal No. 3 of 1982 decided on July 29, 1982. That appeal was filed by the present applicant against the order dated June 19, 1980, passed by the Sales Tax Officer (4), Division 1, Bhavnagar in respect of the assessment period from May 1, 1976 to April 30, 1977. Before the Tribunal, it was contended that maleic resins, which are used as raw materials in the manufacture of varnish, would be covered by the residuary entry 13 of Schedule III and not by entry 9 of Schedule II, Part A, to the Sales Tax Act. It was also contended that in common parlance and in the trade maleic resins are not known as chemicals. For this purpose, the applicant has relied upon various opinions which were produced on record before the Tribunal. Before the Tribunal, the applicant had also relied upon the determination order passed by the Deputy Commissioner of Sales Tax in the case of M/s. Synthetic and Polymer Industries of Ahmedabad for substantiating its contention that maleic resins would not be covered by entry 9. The Tribunal rejected the contentions raised by the applicant and relied upon its earlier decision in the case of Hoechst Dyes and Chemicals Ltd. v. State of Gujarat 8 GSTD 294, wherein the Tribunal had held that synthetic resin groups are chemicals covered by entry pertaining to "dyes and chemicals". The Tribunal, therefore, allowed the second appeal partly by confirming the finding of the Sales Tax Officer that maleic resins are chemicals within the meaning of entry 9 of Schedule II. The Tribunal, however, waived the penalty imposed u/s 45(6) of the Sales Tax Act.

4. The learned advocate for the applicant vehemently contended that maleic resins are not known as chemicals in the trade. For this purpose, he relied upon various opinions given by the traders. He, therefore, contended that, while interpreting as entry under the Sales Tax Act, popular meaning should be assigned instead of scientific or technical meaning. As against this, Mr. Y. F. Mehta, learned Assistant Government Pleader, submitted that maleic resins are chemicals and even in popular parlance they would be chemicals and they cannot

have any different meaning.

5. For appreciating the contentions raised by the learned advocates for the parties, it would be necessary to refer to entry 9 of Schedule II, Part A and entry 13 of Schedule III of the Sales Tax Act. Entry 9 and entry 13 as they existed as the relevant time are as under :

-----								Sr. Description of			
goods	Rate	of	Rate	of	No.	sales	tax	purchase	tax		
-----								(1)	(2)	(3)	(4)
-----								9	Dyes	and	
chemicals other than those Four paise in Four paise in specified in any other								entry in this the rupee. the rupee. or any other Schedule. 13 All goods other			
than those specified Seven paise Three paise from time to time in sections 18,								19A in the rupee. in the rupee. and 19B and in Schedules I and II and in the			
preceding								entries.			
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6. For the product "maleic resins", the applicant has produced on record annexure "5", which is a certificate by the Chief Chemist of Saurashtra Chemical Manufactures" Association, wherein it is stated that maleic resins contain resin, fumaric acid, di-ethylene glycol, pento-orithritol. It is also opined that maleic resins are a mixture of plastic resins. They are only polymerised industrial plastic materials and not chemicals as understood in common parlance. Such resins are used in the industry as a raw material in the manufacture of printing inks, varnishes, paper polishing, paints, etc. In the opinion which is produced at annexure "10", it is stated that synthetic resins such as maleic are positively synthetic resins. It is also mentioned that these resins are completely high polymer and that cannot be expressed by definite structure formula. In the letter which is produced at annexure "8", it is, inter alia, stated that such artificial or synthetic resins have no definite molecular formula as they are polymers and in common parlance it is considered to be artificial or synthetic resins. In the letter dated February 19, 1981 (annexure "7") written by the Bhavnagar Chemical Manufactures Association, it is stated, inter alia, as under :

"1. Maleic resin is the condensation products of maleic acid/anhydride with polyhydric alcohol and resin and it is like phenol-formaldehyde moulding powder, it is the end-product.

2. Maleic resins are mainly used in surface coatings industries using suitable solvents and does not interact with solvents so as to produce any new product having entirely different characteristics and properties.

3. Such artificial and synthetic resins have no definite molecular chemical formula as they are the polymers."

7. Considering the aforesaid certificate and opinions produced by the applicant before the Tribunal, it is apparent that "maleic resin" is a substance obtained by

chemical process and is a chemical product. It is artificial or synthetic resins having no definite molecular formula. Further, maleic resin is the condensation product of maleic acid/anhydride with polyhydric alcohol and resin. It has no definite molecular chemical formula as it is the polymers. Hence from the record it is apparent the "maleic resins" is obtained by chemical process and is a chemical product.

8. The next question is as to whether "maleic resin" is covered by entry 9 which provides for dyes and chemicals. For this purpose, we would first refer to the three decisions cited at the time of hearing of the matter. In the case of *State of Gujarat v. Jayant Chemical Works Pvt. Ltd.* [1975] 36 STC 112, identical entries under the Bombay Sales Tax Act, 1959, were considered by the Division Bench of this Court. In that case, the assessee sold "refined bentonite powder" and claimed that the goods sold were covered by entry 4 of Schedule C which pertained to dyes and chemicals other than those specified in other entries of Schedule C or of those in other Schedules. The Sales Tax Officer however, negated this contention and held that it fell under residuary entry No. 22 of Schedule E. The Tribunal reversed the said order by holding that the substance in question had a chemical effect and was, therefore a chemical liable to be taxed under entry 4 of Schedule C to the Bombay Sales Tax Act. Before this Court, on behalf of the State, it was contended that all chemicals cannot be taxed under entry 4, as the meaning of the word "chemicals" would take its colour from the preceding word "dyes" described in the said entry. The court negated the said contention by holding that the word "chemicals" should not by any stretch of imagination in this particular entry be said to take a limited meaning from the preceding word "dye-stuff". The court held, "entry 4, namely, "dyes and chemicals" other than those mentioned in other entries of Schedule C or of those in other Schedules, is a residuary entry as far as the dye-stuff and chemicals are concerned. It takes in its purview all types of dyes and chemicals which are not specifically mentioned in other entries of Schedule C or in any other entries of any Schedules".

9. The judgment in the case of *The State of Gujarat Vs. Jayant Chemical Works Pvt. Ltd.*, is relied upon by this Court in the case of *Vijay Foundry & Machinery Works v. State of Gujarat* [1992] 84 STC 152 (Guj). Entry 9 and entry 13 were considered in the context of a question as to whether "raw bentonite powder" is a "chemical" within the meaning of entry 9 of Schedule II, Part A, or whether it is covered by residuary entry 13 of Schedule III. The court held that unrefined bentonite powder is basic chemical from which refined bentonite powder is derived. It is chemical substance. The court referred to the definition of word "chemical" occurring in Webster's New Twentieth Century Dictionary of the English Language, Unabridged (2nd Edition, 1979), wherein the meaning of the term "chemical" is given as follows :

"Chemical - any substance used in or obtained by a chemical process or processes"

10. The court held, "after referring to the aforesaid definition, the Tribunal rightly observed that a commodity need not be a product of a chemical process and also be used to produce a chemical effect in order to be classed as a chemical. Both these qualities are alternative qualities and the possession of either suffices to make the article a "chemical"."

11. These entries were also considered by the Division Bench of this Court in the case of Gujarat Distributors v. State of Gujarat [1975] 36 STC 116. In that case, the question was as to whether products known as aldrex, dieldrex and endrex, which were sold by the assessee, were the "chemicals" covered by entry 4 of Schedule C to the Bombay Sales Tax Act, 1959, or are the articles which fall within the residuary entry 22 to Schedule E of the Act. In that case, the assessee admitted that the articles referred in that case were insecticides which were used for the production of agricultural products. The Division Bench in that case applied the common parlance test and arrived at the conclusion that, since the articles are germicides, they would not be known in the commercial world as mere "chemicals", which would obviously represent a very wide category of articles. For this purpose, the Division Bench posed a question as to whether if a consumer of the articles which are disputed in that case goes to the market and asks for a "chemical" from a dealer of those articles, would he be supplied any of those articles. The court referred to Encyclopaedia Britannica wherein under the caption "chemical industry" three general classes of chemical products are discussed. They are as under :

"(1) Basic chemicals such as acids, alkalies, salts and organic chemicals;

(2) Chemical products to be used in further manufacture such as man-made fibres, plastic materials, crude animal and vegetable oils, dry colours and pigments;

(3) Finished chemical products to be used for ultimate consumption, such as drugs, cosmetics and soaps, or to be used as materials or supplies in other industries, such as paints, fertilizers and explosives."

12. The Division Bench thereafter negated the contention of the assessee that all the end-products in the manufacture of which chemicals are used would be covered by entry 4 of Schedule C. It was held that if that contention was accepted then it would follow that all end-products in the manufacture of which chemicals are used would fall within the ambit of that entry, provided there is no specific entry covering such product. The court further observed, "This view would be patently wrong because that would render the mention of dyes in this entry quite redundant. As already pointed out by us, even a dye is an intermediary chemical product and if the word "chemicals" is held to have been used in the most comprehensive sense covering all the three categories of chemicals, namely, basic chemicals, intermediary chemical products and end-products then obviously the product known as dye would be covered by the wider category and there would not have been any necessity of making a special

mention of dye in this entry. It cannot be disputed that chemical is a wider term and since this wider term is used in collocation with a term of narrower meaning, namely, a dye, the said wider term must take its colour and meaning from the meaning which could be attributed to the narrower term". The court further held that since the articles, namely, aldrex, dioldrex, or endrex were germicides, they would not be known in the commercial world as mere "chemicals", which would obviously represent a very wide category of articles and, therefore, the said articles would not be covered by the disputed entry 4 of Schedule "C".

13. From the aforesaid decisions of this Court with regard to entry in question, it can be stated :

(i) It takes in its purview all types of dyes and chemicals which are not specifically mentioned in other entries. That means, it is a residuary entry as far as dyes and chemicals are concerned;

(ii) For being covered by the said entry, it need not simultaneously be a product of chemical process and be used to produce a chemical effect. It would suffice if it is obtained by a chemical process or, in the alternative, it produces a chemical effect;

(iii) If it is end-product known in the market by different names such as drugs, cosmetics, soaps for ultimate consumption, then it would not be covered by the said entry.

14. In the present case, applying the aforesaid tests, maleic resins would be covered by entry 9 as it is a chemical product. It is also used as raw material in the manufacture of printing inks, varnishes, paper polishing, paints, etc. In this view of the matter, it is difficult to accept the contention of learned advocate Mr. Pathak for the applicant that the applicant's product is an end-product because admittedly it is used as a raw material in the manufacture of varnishes and other items as stated above.

15. Mr. Pathak, learned advocate for the applicant, further contended that in trade maleic resin is not known as chemical. It is known as end-product which can be used in the manufacture of varnish. He, therefore submitted that, to an article referred to in any taxing statute popular meaning should be assigned and technical or scientific meaning should not be given. For this purpose, he relied upon the certificates produced by the applicant before the Tribunal to establish that maleic resins are not known in the trade as chemicals. For the proposition that, while interpreting an entry in the Sales Tax Act, the popular meaning should be assigned and not technical or scientific, he referred to the decision of the Supreme Court in the case of Commissioner of Sales Tax v. Jaswant Singh Charan Singh [1967] 19 STC 469. In that case, the Supreme Court interpreted entry 1 of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, which provided for coal including coke in all its forms. The court approved the view taken by the High Court that charcoal would be included in the word "coal" considering its commercial and popular meaning. In that case, the court

referred to the principle laid down in *King v. Planters Nut and Chocolate Co. Ltd.* [1951] CLR (Ex) 122 that resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, according to their commercial sense, and referred to the observation that the words used are to be construed as they are understood in common language and not to what would be a botanist's conception of the subject-matter. It is also observed "if a statute uses the ordinary words in every day use, such words should be construed according to their popular sense". Further, the court has pertinently observed as under :

"This rule was stated as early as in 1831 by Lord Tenterden in *Attorney-General v. Winstanley* [1831] 2 D & C 302. Similarly, in *Grenfell v. Inland Revenue Commissioners* [1876] 1 Ex. D. 242, Pollock, B., observed "that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words "popular sense", that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. But "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adopted to the fitness of the matter of the statute". On the other hand, as Fry, J., said in *Holt & Co. v. Collyer* [1881] 16 Ch. D. 718 "if it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning"."

16. From the aforesaid observation, it is clear :

(a) If the statute contains the language which is capable of being considered in popular sense, such language is to be considered in its popular sense;

(b) Popular sense meaning would be that meaning which people conversant with the subject-matter with which the statute is dealing would attribute to it. For chemical products or chemicals, meaning which is known to the concerned persons dealing in chemical products or chemicals, is required to be assigned.

(c) If the word is of technical or scientific character, then it should be considered in technical or scientific manner.

17. Admittedly, maleic resins produced by the applicant are synthetic resins. It is a chemical product which is an essential raw material for manufacturing printing inks, varnishes, paper polishing, paints, etc. It is a mixture of ester gum, fumaric esters of di-ethylene glycol and penta erythritol, as certified by the Chief Chemist of the Saurashtra Chemical Manufacturers' Association.

18. Further, the question of interpreting an entry and giving its meaning in the popular sense would arise only if the entry contains the language which is capable of being considered in the popular sense. This question is also considered by the Supreme Court in the case of Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, . The court has observed as under :

"It is, of course, well-settled that in taxing statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the tariff Schedule."

19. Similar contention was raised before the Bombay High Court in the case of Chemicals and Fibres India Limited v. Union of India [1982] ELT 917 (Bom). The court considered the contention whether polyester chips of textile grade manufactured by the petitioners were assessable to excise duty under item 15A of Schedule I to the Central Excises and Salt Act, 1944. The relevant item 15A of Schedule I to the Central Excises and Salt Act, 1944, provided for artificial or synthetic resins and plastic materials, and articles thereof. It was contended before the court that "polymer chips" are chemicals; the polymer chips are purely an intermediate product which have no use and are not marketable but which are base material for the manufacture of polyester staple fibre; in the market or trade or by people who regularly deal with plastics, they are not understood nor known as plastics or artificial or synthetic resins or as raw materials for such plastics. The court considered the definition given in the Condensed Chemical Dictionary, which is as under :

"Resin, synthetic. A man-made high polymer (q.v.) resulting from a chemical reaction between two (or more) substances, usually with heat or a catalyst. This definition includes synthetic rubbers, siloxanes, and silicones, but excludes modified water-soluble polymers (often called resins). Distinction should be made between a synthetic resin and a plastic (q.v.) the former is the polymer itself, whereas the latter is the polymer plus additives as filters, colourant, plasticizers, etc....."

Note : Because the term "resin" is so broadly used as to be almost meaningless, it would be desirable to restrict its application to natural organosoluble, hydrocarbon based products derived from trees and shrubs. But in view of the tendency of inappropriate terminology to "gel" irreversibly, it seems like a losing battle to attempt to replace "synthetic resin" with the more precise "synthetic polymer". See also note under gum natural."

20. Thereafter, the court considered the meaning of polyester and observed as under :

"A polyester is a high polymer and includes a variety of materials having properties ranging from hard and brittle to soft and elastic. Addition of such

modifying agents as filler, colorants, etc., yield an almost infinite number of products collectively called plastics. High polymers are the primary constituents of synthetic fibres, coating materials (paint and varnishes), adhesives, sealants, etc. (See "polymer high" in Condensed Chemical Dictionary). A polymer has been described as a compound formed by the reaction of simple molecules having functional groups that permit their combination to proceed to high molecular weights under suitable conditions and polymers may be formed by polymerization (addition polymer) or polycondensation (condensation polymers). Condensation is a chemical reaction in which two or more molecules combine, with the separation of water or some other simple substance. If a polymer is formed, the process is called polycondensation. (See Condensed Chemical Dictionary)."

21. The court held that polymer chips would be covered by entry 15A which provides for artificial or synthetic resins and plastic materials in any form. With regard to the rule of construction which requires a word to be construed in its popular sense, the court held that while construing a word which is of a technical or scientific character, its technical or scientific meaning is required to be assigned.

22. In this view of the matter, we hold that the Tribunal was justified in holding that maleic resins made by the applicant were covered by entry 9 of Schedule II, Part A to the Sales tax Act and not by residuary entry 13 of Schedule III.

23. With regard to question No. (2), the Tribunal was right in holding that the order of determination dated May 29, 1964, passed by the Deputy Commissioner of Sales Tax (Appeals), Gujarat State, Ahmedabad, would not be automatically binding on the Sales Tax Officers and the Assistant Commissioners of Sales Tax while assessing the other dealers including the applicant. In our view, the Tribunal was right in holding that the Sales Tax Officers and the Assistant Commissioners of Sales Tax were bound to follow the decision pronounced by the Tribunal in the case of Hoechst Dyes and Chemicals Ltd. v. State of Gujarat 8 GSTD 294. Further, this question is also covered by the decision of this Court in the case of Bavishi & Sons v. State of Gujarat [1992] 84 STC 161. However, the learned advocate for the applicant at this stage does not press this question for our decision. Hence, this question requires to be replied and answered in the affirmative, against the assessee and in favour of the Revenue.

24. In the result, for question No. (1) we hold that the sales of maleic resins made by the applicant were covered under entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969. Consequently, for question No. (3) also, we hold that the Tribunal was justified and right in law in appreciating the evidentiary value of all the documents produced and relied on by the applicant and in recording findings that the sales of maleic resins made by the applicant were covered under entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969. Question No. (2) is also answered in the affirmative in favour of the Revenue and against the assessee. Considering the facts and circumstances of the case, there

shall be no order as to costs

25. Reference answered accordingly.