

(1989) 06 CAL CK 0028
In the Calcutta High Court
Case No : C.R. 3839 (W) of 1977

Seth Chemical Works (P) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-06-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3
Constitution of India, 1950 — Article 226, 265, 31(1)

Citation : (1989) 43 ELT 6

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S.R. Banerjee, S.N. Mukherjee and D.C. Nandi, for the Appellant; S.M. Sanyal and N. Mitra, for the Respondent

Judgement

Susanta Chatterji, J.—The present rule was issued on 11-7-1977 at the instance of the writ petitioner, Seth Chemical Works Private Ltd. praying, inter alia, to strike down the assessment orders levying duty on ultramarine blue form 1962-63 till 1976-77 for the sum of Rs. 26,84,539/- and subsequent amounts and further praying to restrain the respondents from assessing any duty on ultramarine blue produced by the petitioner in its factory and for refund of the excise duty so illegally realised.

2. It is stated that the petitioner has been carrying on manufacturing operation of the product of ultramarine blue and marketing the same through its customers and/or stockists or dealers. According to the petitioner the trade in ultramarine blue has various brand names and are used in the market as Robin ultramarine blue, Crown blue, Atlantic blue and Robin super. It is placed on record that the end product of ultramarine blue is a compound of sodium, aluminium, silicon, sulphur and oxygen and is ordinarily and predominantly used as an agent for temporarily brightening the whiteness of things particularly textiles. In the common parlance in the industry and trade it is known as Dhobi blue. It is elaborated by placing on record that this manufactured item if put in water does

not dissolve but due to fineness of its constituent particles it disappears in the water and settles down in the bottom. In that process the water is only temporarily made blue because only of dispersions and no allusions of the particles. It is strenuously asserted that the product is never ordinarily commercially used for dying, colouring or painting and it is not known in the commercial parlance or in the industry or trade dealing in the product as a dye in any manner whatsoever. Elaborating all these points in details the petitioner has come to this court on the ground that the respondents Central Excise authorities have no power and/or jurisdiction u/s 3 and/or other provisions of the Central Excises and Salt Act, 1944 to assess and/or levy and/or collect duty on any product unless the same is excisable goods within the meaning of the said Act. It is highlighted that the power, authority and/or jurisdiction of the respondent Central Excise authorities are circumscribed by the provisions of the said Act and/or rules framed thereunder. The said authorities have no power to assess and/or collect any money as duty on any non-excisable goods and retain any sum so collected without any authority of law. The main thrust and/or grievance of the petitioner is that ultramarine blue produced by the petitioner in its factory can only be assessed to duty under Tariff Item No. 14.1(5) if the product is known to the commercial community and/or is brought to the market for sale and purchase as pigment or colours or paints or enamels and not otherwise. The purported demand of the Central Excise authorities that the ultramarine blue produced by the petitioner is an excisable goods have been made without jurisdiction and/or in excess of jurisdiction and/or is a nullity. They have made a specific allegation that the assessment and collection of excise duty on ultramarine blue from 1962-63 till 1976-77 is illegal, without jurisdiction and/or is ultra vires the Act and/or have been made in contravention of Section 3 of the said Act and/or Articles 31(1) and 265 of the Constitution of India and as such all purported assessment orders on ultramarine blue for the period 1962-63 to 1976-77 and thereafter are liable to be set aside and/or quashed. Much emphasis has been laid that inasmuch as the Central Excise duty has been purportedly assessed on ultramarine blue although the same is not an excisable goods and the respondent Central Excise authorities have no right and/or authority to retain the money illegally collected as duty for unjust enrichment and the petitioner is entitled to refund of the amount so illegally realised and/or collected from the petitioner.

3. The writ petition is contested by the respondent Central Excise authorities by filing an A/O. It is placed on record that Seth Chemical Works, a partnership firm, carried on business of manufacturing and dealing in, inter alia, ultramarine blue having its factory at Liloah, Howrah. The said ultramarine blue falls under Item No. 14(1)(5) of the First Schedule to the Central Excises and Salt Act as pigments colours, paints, enamels not otherwise specified and after obtaining necessary Central Excise Licence paying the Central Excise duty leviable on the product at the appropriate rate. It is also stated that in 1972 M/s. Seth Chemical Works by a letter requested the Collector of Central Excise to exempt their

products from payment of excise duty and to direct refund of the duties so far paid by them. In reply to the said letter the Deputy Collector informed that the petitioner's representation had been forwarded to the Assistant Collector of Central Excise, Calcutta VIII Division with direction to pass necessary orders after observing principles of natural justice. They were further informed to prefer an appeal if they became aggrieved by such orders. The Assistant Collector of Central Excise passed orders on such representation by holding that the said product would be deemed as pigments and colours not otherwise specified and classified under the Central Excise Tariff Item 14(1)(5). Sometimes in August 1976 the petitioners disclosed that they have acquired the entire goodwill and the business and undertaking of the aforesaid partner-ship firm M/s. Seth Chemical Works and by a letter dated 24-6-1977 and 29-6-1977 the petitioner requested the respondents to recall, revoke, vacate all proceedings or orders resulting in assessment demand levy and collection of Central Excise duty on the petitioners' product ultramarine blue pigments and colours classified under Central Excise Tariff Item 14(1)(5) and to refund the same collected as duty. The petitioners without waiting for the reply to the letters and without availing remedies provided under the statute by preferring appeal against the orders of assessments and demands raised, filed a petition under Article 226 of the Constitution and obtained the above rule.

4. Mr. Banerjee along with Mr. Mukherjee appearing for the petitioner have made a lengthy argument in support of the writ petition. It has been brought to the notice of this court that no tax shall be levied or collected except by authority of law. Reference was made to a decision reported in *Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.*, . The expression "authority of law" clearly implies that the procedure for imposing the liability to pay tax has to be strictly complied with. The attention has also been drawn to this Court to a decision reported in AIR 1965 S.C. 55 where the Supreme Court held that the law must be a valid law and a tax could only be imposed by a law which is valid by conformity to the criterion laid down in the relevant Articles of the Constitution. A reference was made to a recent decision of the Supreme Court reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and the attention of the court has been drawn that in the said case, popularly known as Maneka Gandhi's case, where the passport was impounded in public interest. It was found that the steps taken by the Government is otherwise unwarranted and uncalled for. The argument was developed by referring to various decisions of several High Courts to indicate, inter alia, that the product which is known as ultramarine blue and in common parlance as Dhobi blue is not covered by any excise item and no excise duty can be levied. Consequently it is argued with force that once tax and/or duty has been levied without the sanction of law, the taxing authority are bound to refund the same and there should be interference by the court if demands are made to realise and/or collect tax when the law does not have its proper sanction. It is strongly argued that in the instant case all relevant facts have not been produced before this court by the contesting respondent excise authorities and there is

violation of the principles of natural justice, inasmuch as, all the decisions made by the Department concerned have neither been disclosed to the petitioner nor been produced before this court for passing an effective judgment.

5. It is also argued on behalf of the petitioner that if it is found by this court that there is no legal sanction to realise excise duty, there is no other alternative but to restrain the respondents from collecting and/or realising such excise duty upon the product ultramarine blue and also to take effective steps to refund all the duties so realised from 1962-63 till 1976-77 and the amount as indicated in details in the writ petition. In support of the case for refund the petitioners have also referred to a number of reported decisions that in a proper situation the court should not only strike down the steps purported to have been taken by the respondents in collecting and/or realising the duties and in proper case the court should rise to the occasion to direct refund of the duties so illegally and irregularly realised and/or collected and there should not be any hesitation on the part of the court to pass necessary orders for refund as the petitioners are otherwise entitled in fact and in law regard being had to the materials so disclosed.

6. Mr. Sanyal appearing on behalf of the respondent Central Excise authorities has opposed the argument advanced on behalf of the petitioner and he has drawn the attention of the court to a decision reported in Nilsin Company Vs. Collector of Central Excise and Others, It was found by Chit-tatosh Mookerjee, J. (as His Lordship then was) that ultramarine blue is understood by the people conversant with the product as pigment i.e. as a colorant. To contend that ultramarine blue is whitening is not correct. Under the condensed Chemical Dictionary relied upon by the petitioners, whitening is entirely a distinct product consisting of finely ground naturally occurring calcium carbonate derived from chalk, limestone etc. and used a filter, putty etc. One of the properties of ultramarine blue is that it is a whitener i.e. of pigment or colorant used in the paper and textile industries. Therefore, ultramarine blue is a pigment having various uses, one of which is whitening or brightening textiles and clothes; thus, not only from the stand point of its physical constituent but also from the stand point of various uses and of popular understanding ultramarine blue is a pigment. Since Item 141(5) of the Central Excise Tariff is broadly in the form of a residuary clause for inclusion of pigments, colours, paints and enamels which have not been specified, therefore, it was classifiable under Item 141(5) of the Central Excise Tariff. In course of deciding the said case attention of the court was drawn to cases reported in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, , Commissioner of Sales Tax, U.P. Vs. S.R. Brothers, Kanpur, and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., and it was observed that it is settled law that a word which is defined in the statute ought not to be construed in any technical sense but as understood in common parlance. A word of every day use must be construed in its popular sense meaning that sense which people conversant with

the subject-matter with which the statute is dealing would attribute to it. It should be construed and understood in common language. By interpreting such point in the statute as understood in the common parlance, the said judgment has further found that it is settled law that for the purpose of taxation, the popular sense of a term prevails over its scientific or technical meaning, but in a case where the technical or scientific meaning of a term does not differ from the sense in which it is understood by the people conversant with and dealing in the said product, the court can also consider the physical constituents of a product along with other evidence. The case reported in AIR 1977 S.C. 32 was relied upon. By discussing in details the decision of the Gujarat High Court, it was found that while deciding the case neither the trial judge nor the Division Bench of the Gujarat High Court had any opportunity of considering the weight of the authorities which have been cited before the Single Bench of the court on behalf of the respondents. It was observed that the learned judges of the Gujarat High Court incidentally had declined to accept as authoritative publication of the Indian Standards Institution on the ground that the attention of the plaintiffs witnesses was not drawn to the same and the defendants did not examine any one from the Indian Standards Institution to explain the purpose for which the booklet had been published and to what extent the manufacturers were expected to follow.

7. Having considered the arguments advanced by the learned lawyers before this court on behalf of the petitioner and the respondents respectively and by looking to the various decisions cited from the bar and in particular the decision in the case of Nil-sin & Company v. Collector of Central Excise, Calcutta and Orissa and Ors. (supra) and the reasons given by Chittatossh Mookerjee, J., an opportunity was given to the learned lawyer for the petitioner to distinguish the case in the facts and circumstances of the present case. It was inter alia submitted that in deciding the case of Nilsin Company (supra) the laboratory reports of various foreign countries were relied upon and by scrutinising also the same and/or the expression in the common parlance and interpreting the statute particularly the taxation statute there should be appreciation of the expression what are prevailing in the common parlance, the case i.e. Nilsin Company (supra) is distinguishable. This court has gone through the judgments, pleadings as made out in the averment in the writ petition and by considering the points of law as involved in the instant case, this court finds that the only thrust of the petitioner's argument is as to whether the product known as ultramarine blue attracts excise duty covered by the residuary article of the Excise Act or not. With all anxieties this court has scrutinised the arguments advanced on behalf of the petitioner, but finds that the points decided squarely in the case of Nilsin Company are covering the case as made out by the petitioner before this Court. This Court has nothing to differ with the view found in Nilsin Company, (supra) and finds that the points raised by the petitioner have already been decided and the said decision stands as a store decisions before this Court, although it is argued that a number of cases covering the field have not been brought to the

notice of Chittatosh Mookerjee, J. (as His Lordship then was) while deciding the case. With much respect to the argument on behalf of the petitioner, this Court finds that all the interpretations made by the Supreme Court have been referred to and/or relied upon and it has been clearly found that the ultramarine blue is such a product which cannot escape payment of excise duty. Once it is found by this court that the product ultramarine blue cannot escape payment of excise duty the argument on behalf of the petitioner falls through. The proposition that Government has no authority to collect any tax if there is no sanction of law is not in doubt. Such a principle as argued on behalf of the petitioner is not applicable so far as the facts involved in the present case. No principle of law is in doubt, but application of such principle must be appreciated regard being had to the facts at issue. Once there is finding that such a product is attracted to make payment of excise duty, the question of refund does not arise. Since all these points raised have been considered in their proper perspective and this Court does not find any merit, the writ petition fails and the rule is discharged. All interim orders are vacated. There will be no order as to costs.

8. There will be stay of operation of this order for a period of a fortnight from date, as prayed.