
(1996) 12 SC CK 0131

In the Supreme Court Of India

Case No : Civil Appeal No's. 1780 of 1980, 3536-40 of 1982 and 7431 of 1983

State of Gujarat

APPELLANT

Vs

Suhrid Geigy Ltd. and Others

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2, 3(1)

Citation : (1996) 9 AD 641 : (1997) 57 ECC 248 : (1997) 93 ELT 10 : (1997) 3 GLR 2487 : (1996) 9 SCALE 245 : (1997) 2 SCC 275 : (1996) 9 SCR 796 Supp : (1997) 106 STC 536

Hon'ble Judges : S. P. Bharucha, J;S. C. Sen, J

Bench : Division Bench

Advocate : R.F. Nariman, Y.P. Adhyaru, Hemantika Wahi, H. Mukherjee, P.H. Parekh, Indoo Verma, Mukul Mudgal, B.H. Chhatarpati and Gopi Jain, V.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—These appeals arise out of judgments and orders of the High Court of Gujarat. The principal judgment was delivered in the case of Suhrid Geigy Ltd., Ahmedabad v. Union of India and Ors. (1980) E.L.T. 538, which is under challenge in Civil Appeal No. 1780/80, and was followed in the other matters. We shall deal with the principal judgment first.

2. The appellants manufacture, inter alia, the following medicinal preparations:

The first ten medicinal preparations are local anesthetics. The other three are anti-inflammatory and anti- rheumatic medicinal preparations and contain a small percentage of Xylocaine. The appellants were issued with demand notices to pay excise duty under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, upon the said medicinal preparations. The demands were challenged in a writ petition before the Gujarat High Court, which was allowed by the principal judgment under appeal.

3. Reference must first be made to some provisions of the said Act. Section 2 is its definition section. Clause (c) thereof defines "dutiabale goods" to mean "the medicinal and toilet preparations specified in the Schedule". Clause (c) defines "medicinal preparation" to include "all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals". The definition of "narcotic drug" and "narcotic" in Clause (h) reads thus:

(h) "narcotic drug" or narcotic" means a substance (other than alcohol) which when swallowed or inhaled by, or injected into, a human being induces drowsiness, sleep, stupefaction or insensibility in the human being and includes all alkaloids of opium.

Section 3(1) is the charging section and it states that there shall be levied duties of excise, at the rates specified in the Schedule. On all dutiable goods manufactured in India. Entry 1 of the Schedule deals with medicinal preparations and sub-entry (1) thereof with allopathic medicinal preparations. Item (iii) thereunder at the relevant time prescribed the duty leviable on "medicinal preparations not containing alcohol but containing narcotic drug or narcotic".

4. The aforementioned notices were issued to the appellants upon the basis that anesthetics, including Xylocaine, were covered by the definition of a narcotic drug or narcotic in Section 2(h); hence, medicinal preparations containing Xylocaine were assessable to duty under the said Act.

5. The High Court took the view that the use in Section 2(h) of the word "or" between the words "stupefaction" and "insensibility" did not suggest alternatives. The four stages of drowsiness, sleep, stupefaction and insensibility mentioned in Section 2(h) were stages of progression which followed one after another and, in that sense, the word "or" meant "and", A narcotic drug or a narcotic should, therefore, produce all the four effects one after the other with the passage of time. When a narcotic drug or a narcotic, which was a component part of the medicinal preparation sought to be taxed, ceased to produce the symptoms set down in the definition of Section 2(h), it ceased to be a narcotic drug or a narcotic. For this, among other reasons, the High Court rejected the Revenue's case.

6. We do not agree with the High Court that, by reason of the definition in Section 2(h), a narcotic drug or a narcotic is a substance which must produce drowsiness and sleep and stupefaction and insensibility, in that order, in a human being, and that the word "or" between "stupefaction" and "insensibility" therein must be read as "and". We take the view that, on its plain meaning, a narcotic drug or narcotic as defined in Section 2(h) is a substance, other than alcohol, which when swallowed or inhaled by, or injected into a human being produces in him either drowsiness or sleep or stupefaction or insensibility. Put differently, a substance that has the effect of inducing drowsiness but not going on to induce

sleep, stupefaction and insensibility is also a narcotic drug or narcotic u/s 2(h).

7. By reason of item (ii) of sub-entry (1) of Entry 1 of the Schedule to the said Act, to be dutiable thereunder a medicinal preparation should contain a narcotic drug or a narcotic. In other words, the medicinal preparation must contain a substance that, when swallowed or inhaled by or injected into human being, produces in him either drowsiness or sleep or stupefaction or insensibility.

8. The Revenue's case is that the said medicinal preparations contain Xylocaine, which is an anaesthetic; Xylocaine has the property of producing drowsiness, sleep, stupefaction and insensibility; therefore, the said medicinal preparations are dutiable. The said medicinal preparations are Xylocaine of varying strengths; admixtures of Xylocaine and adrenaline of varying strength; and Butazolidin and Irgapyrin, which contain Xylocaine. Xylocaine is manufactured by the appellants. Xylocaine is itself a medicinal preparation, as defined by Section 2(g). It cannot, therefore, be said to be a "substance" within the meaning of Section 2(h), by reason of whose inclusion in another medicinal preparation, the other medicinal preparation becomes dutiable. As we see it, to render a medicinal preparation dutiable, it must include some substance, other than a medicinal preparation, that possesses the properties of producing drowsiness, sleep, stupefaction or insensibility. That substance needs to be identified. If that substance is in a medicinal preparation, whether by itself or by reason of being an ingredient of another medicinal preparation that is incorporated in the medicinal preparation, the medicinal preparation is dutiable. In the present case, it is not enough for the Revenue to state that the said medicinal preparations contain Xylocaine and Xylocaine has the properties mentioned in Section 2(h). What must be set out is: what is it that is contained in Xylocaine which contains these properties and, by reason thereof, makes the said medicinal preparations dutiable.

9. It is, therefore, that we would agree with the High Court that the demands upon the appellants must be quashed.

10. Having regard to this conclusion, we do not find it necessary to consider either the argument that the State of Gujarat, by itself, cannot maintain the appeal or that the demands upon the appellants contravene the provisions of Article 14 of the Constitution.

11. In the other appeals, anesthetics are ingredients of the medicinal preparations sought to be made dutiable. As in the case of Xylocaine, what it is within the anesthetics that produces drowsiness or sleep or stupefaction or insensibility was not identified. For the reasons afore-stated, these appeals must also be dismissed.

12. The appeals are dismissed. No order as to costs.