

**(1994) 04 P&H CK 0046**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 8918 of 1987**

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|------------------------------------------------|------------|
| Taylor Instruments Co. (India) Ltd., Faridabad | APPELLANT  |
| Vs                                             |            |
| State of Haryana and others                    | RESPONDENT |

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**Date of Decision :** 07-04-1994

**Acts Referred:**

Faridabad Complex (Regulation and Development) Act, 1971 — Section 21, 26

**Citation :** AIR 1995 P&H 53

**Hon'ble Judges :** Jawahar Lal Gupta, J

**Bench :** Single Bench

**Advocate :** Jaswant Singh Phogat, P.N. Lekhi, Atul Sharma and Pritam Singh Saini, for the Appellant; J.K. Sibal and Sanjeev Sharma and Jaswant Singh Phogat, for the Respondent

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## Judgement

1. The petitioner-Company is engaged in the manufacture of Industrial Process Control Instruments. It is located within the local limits of the Faridabad Complex. It procures various components from within the country or from its collaborators and associates abroad for use in the manufacture of these instruments. These components are subjected to the levy of octroi duty. Up to July, 1986, the duty was levied @ Rs. 5.60 per 100 kilograms. On August 8, 1986, the respondents started levying ad valorem octroi duty @ 2% with 100% sur-charge on the ground that the components brought by the petitioner within the local limits of Faridabad Complex were scientific instruments/televisional apparatus and goods as envisaged under entry No. 76 of the "rate schedule". On October 26, 1987, respondent No. 5 passed an order levying an octroi duty amounting to Rs. 96,618-54 paise. Aggrieved by this order, the petitioner has approached this Court through this petition. It contends that the components used for the manufacture of Industrial Process Control Instruments are neither scientific instruments nor televisional apparatus/goods, but are in fact "industrial machinery and thus do not fall in any of the items mentioned in entry No. 76 of the Octroi Rate Schedule". The respondents contest this. A few facts may be briefly noticed.

2. The petitioner was originally incorporated in the name of Taylor Instruments Company (India) Limited on May 22, 1964, under the Companies Act, 1956. During the pendency of this petition, it changed its name to Birla Kent Taylors Limited on May 24, 1993. A fresh certificate of incorporation was issued by the Registrar of Companies on July 26, 1993. "A copy of this certificate has been produced by the petitioner with Civil Misc. Application No, 12148 of 1993. It has been prayed that the changed name of the petitioner-company may be "substituted and necessary" correction be made "in the array of parties, Notice of this application was given to the respondents. No objection had been raised. The application is,<sup>1</sup> "thus, allowed. Accordingly, the name of the petitioner is directed to be corrected in the title of the petition.

3. There was "a multiplicity of local authorities in Faridabad-Ballabgarh area with the result that integrated development of this area" was not possible. In order to "enact a uniform law for regulation and development of the Faridabad Complex and the adjoining town and localities", the legislature of the State of Haryana enacted the Faridabad Complex (Regulation and Development) Act, 1971 (Act No. 42 of 1971). u/s 21 of the Act, the Chief Administrator was authorised to impose certain taxes with the previous sanction of the State Govt. The procedure was prescribed u/s 26. In exercise of these powers, the State Govt. notified the imposition of a tax "on the entry of goods into the limits of Faridabad Complex for use, sale or consumption therein in the nature of octroi" with 50% surcharge thereon. By notification dated October 14, 1982, the rate of surcharge was raised to 100% with effect from November 15, 1982. A rate schedule was also notified. Reference to the relevant entries in this Schedule shall be made at the appropriate stage.

4. The basic dispute between the parties is regarding the interpretation of these two entries, factually, the petitioner avers that it has been bringing components within the local limits of Faridabad Complex for the last more than two decades and has been using the said components for the manufacture of Industrial Process Control Instruments. As far back as the year 1976, a dispute was raised by respondents Nos. 3 to 5. However, the petitioner's claim was accepted and a direction was issued by the, then Chief Administrator to the Octroi Superintendent to levy the duty under the residuary provision contained in entry No. 145 instead of 76. This position was reiterated in a subsequent order passed on August 13, 1979, A copy of this order has been produced as Annexure P5 with the writ petition. In spite of this order, respondent No. 3 on August 12, 1981 assessed the octroi duty in respect of a consignment of parts of multipoint Recorder under entry No, 76. A copy of this order has been produced as Annexure P7. The petitioner filed an appeal, vide order dated May 5, 1983, the petitioner's contention was upheld and a direction for this refund of excess" octroi duty paid by the petitioner was issued. A copy of this order has been produced as Annexure P9. Up to July, 1986, the respondents continued to charge octroi duty under entry No. 145. However, in August, 1986, respondent No. 5 again started stopping the consignments of the petitioner and demanded duty

under Entry No. 76. This continued till September 22, 1987 when the petitioner submitted a detailed representation. The matter was heard. Vide order dated October 26, 1987, respondent No. 5 confirmed the assessment of octroi duty under entry No. 76. The petitioner's contention that the components "contained in the said consignment" were covered under entry No. 145 was rejected. A copy of this order has been produced as Annexure PI1 with the writ petition. Aggrieved by this order, the petitioner filed an appeal. It also prayed for the grant of stay. The petitioner was granted a personal hearing. It is averred that "the said respondents in unequivocal terms conveyed to the representatives of the petitioner that the appeal against the order dated 26 October, 1986 would be rejected and a formal order in this regard would be passed on 23 November, 1987". The petitioner thus filed the present petition. The order dated October 26, 1987, has been challenged on a number of grounds which would be presently noticed.

Entry 76 originally read as under:--

"All kinds of scientific, mathematical, optical, surgical and dentistry instruments and equipments including telephonic, telegraphic, and televisional apparatus and goods".

5. On April 22, 1992, this entry was amended and substituted to include "industrial process control instruments and parts thereof. The petitioner filed Civil Misc. Application No. 4547 of 1992 for amendment of the writ petition. On July 29, 1992, V. K. Bali, J, had given notice of this application to the learned counsel for the respondents. The matter was adjourned to August 19, 1992. A reply to the application for permission to amend the writ petition was filed on behalf of respondents Nos. 3 to 5 on August 29," 1992. However, it appears that no order permitting the amendment of the writ petition was passed. At the hearing of the case, learned counsel for the petitioner has confined the challenge to the order dated October 26, 1987 (Annexure PII) and reserved the right to separately challenge the notification dated April 22, 1992. Consequently, it is not necessary to notice this matter any further.

6. A written statement has been filed on behalf of respondents Nos. 3 to 5 by Mr. R. K. Taneja, Chief Administrator, Faridabad Complex Administration. It has been averred by way of a preliminary objection that the petitioner has rushed to the High Court without waiting for the decision on appeal and as such, the writ petition is premature. On merits, it has been averred that the petitioner had been initially manufacturing "pneumatic instruments". With the advancement of technology, the petitioner has switched over to the manufacture of "computerised electronic industrial process control instruments". These instruments are identical to the televisional apparatus and the components are thus assessable under entry No. 76 of the Octroi Schedule. It has been further averred that the components imported by the petitioner-firm are not scientific instruments but "they are also scientific equipment and televisional apparatus and goods". It has also been pleaded that the components of pneumatic

instruments being imported by the petitioner were assessed under serial No. 145, but "now the goods being imported by the petitioner-firm are entirely different and they are, scientific instruments, televisional apparatus and goods -- for the manufacture of computerised electronic industrial process control instruments. They squarely fall within serial No. 76 of the Octroi Schedule". Elaborating the statement, it has been mentioned that "what the company used to import earlier were indicating, recording regulating devices for pressure, temperature, rate of flow, levels and the like as mentioned in Annexure P13. What the Company is now importing are parts/components and sub-assemblies of their computerised electronic televisional apparatus as mentioned in their invoices. These components are transistors, integrated circuits capacitors, prints circuit boards, diodes, coils, indicators, transformers, heat sinks, vacuum fluorescent display. These components and parts are the same as used in television sets and televisional apparatus." It has been admitted that vide order dated October 26, 1987, a demand amounting to Rs. 96,618-54 paise was raised against the petitioner by assessing the goods under entry No. 76. However, the above amount has not been paid so far. Various grounds raised in the writ petition have been controverted.

7. The petitioner has filed a replication. The averments made in the written statement have been controverted. It has been inter alia averred that "merely because some components imported by the petitioner are used in the manufacture of television sets, the components imported by the petitioner would not become televisional apparatus and fall under serial No. 76 of the Octroi Schedule. The components imported by the petitioner are industrial machinery and constitute capital goods or core sector industries like industrial plants, irrigation projects", mining projects, projects for exploration of oil and other minerals, fertilisers, paper, cement, paper chemical, refineries,".

8. These are the pleadings.

Counsel for the parties have been heard. Mr. P. N. Lekhi, learned counsel for the petitioner, has made the following submissions :--

(1) the respondents having accepted the petitioner's claim that the components imported by it are covered by entry No. 145 have no power to review the decision;

(2) the fact that the respondents have described the same goods differently in the impugned order as well as the written statement shows that they are themselves not sure of their true description, and thus the goods are covered by the residuary entry;

(3) the taxing statutes have to be strictly construed. There is no room for intendment. The impugned assessment is ultra vires because the respondents have passed the impugned order on the, hypothesis that "televisional" is "television";

(4) referring to the dictionary of Information Technology as well as the Business Dictionary by Collins, it has been contended that the industrial process control instrument is a tool or piece of equipment used to monitor the functioning of machine and is not an apparatus or instrument which may be even remotely linked with television;

(5) the impugned order is vitiated as it has been passed in total disregard of the licence granted to the petitioner under the Industries (Development and Regulation) Act, 1951, and the entries in the schedule thereof;

(6) the notification dated April 22, 1992, by which entry No. 76 has been amended so as to include the industrial process control instruments and parts thereof shows that these items were not initially covered under the said entry.

9. Mr- J. K. Sibal, learned counsel for respondents Nos. 3 to 5 has controverted the claim made on behalf of the petitioner. He has contended that all articles including raw material pertaining to television fall within the ambit of televisual goods as mentioned in entry No. 76. The end product being irrelevant, the action of the respondents in levying octroi duty under entry No. 76 is legal and valid. He has further contended that the fact that the petitioner has been granted a licence under entry No. 15(2) of the Industries (Development and Regulation) Act, 1951, is wholly irrelevant. On these premises, the learned counsel has contended that the levy is legal and valid.

10. Before proceeding to consider the respective contentions, it may be observed that octroi is leviable in respect of goods brought in the complex "for consumption, use or sale". The taxable event is the entry of goods. The taxable person is the importer. The rate of tax or duty is determined by the nature of goods. If the goods answer the description, as given in a particular entry, the duty as prescribed therefore has to be paid. To determine the true description of goods, the words or expressions describing an article in a tariff schedule have to be construed in the same sense in which they are understood in the trade by the dealer and the consumer. Since the, taxable event is the entry of goods, their actual user or the end produce as produced, is wholly irrelevant. The rate of duty shall depend upon the kind of goods that enter the territorial limits of the complex. If the goods answer the description in entry No. 76 of the Tariff Schedule, the octroi shall be leviable @ 2 per cent. Otherwise, the petitioner shall be liable to pay the octroi duty as contended on its behalf in accordance with entry No. 145. For this purpose each consignment has to be independently examined.

11. At this stage, it is also appropriate to notice the findings recorded by the assessing authority. A perusal of the impugned order shows that the components imported by the petitioner as mentioned in the invoices were "transistors, integrated circuits capacitors, printed circuit boards, diodes, coils, indicators, transformers, heat sinks, vacuum fluorescent display". It has been observed in the order that these components "are used in television and televisual

apparatus". On this basis, it has been held that the "parts and components being imported by the firm are classifiable under serial No. 76 of the Octroi Schedule and under no other Act. . . ." The correctness or otherwise of this finding has to be decided in the light of the contentions raised" by the learned counsel for the parties. Consequently, let us examine the contentions.

12. Reg: Contention (1):

The taxable event being the "entry of goods into the limits of the Faridabad Complex for use, sale or consumption therein...." the rate of octroi is determined by the examination of goods. For this purpose, each consignment has to be independently assessed. If an examination of goods, the assessing authority finds that these answer the description in one or the other entry, it shall impose the duty at the rate prescribed for those goods. Each order of assessment is, in a sense, an independent order. If in a given case it is found that the goods are covered under entry No. 76 and not under entry No. 145, it does not amount to a review of the earlier order. Secondly, even if it is assumed that in respect of an identical consignment a view favourable to the assessee had been taken by the competent authority on an earlier occasion, it cannot preclude the authority from taking a different view in respect of another consignment. The order of assessment in this case is different. There is no review. Consequently, the contention that the authority has reviewed the earlier order cannot be accepted.

13. Reg: Contention (2):

A perusal of the impugned order shows that in paragraph 1, the assessing authority has enlisted the various articles imported by the petitioner on the basis of the entries in the invoices. Having done so, it has observed that these are the parts and components "which are used in television and televisual apparatus". This is the finding. Nothing more has been said with regard to the classification of the goods. The court has to consider the validity of this finding. In the written statement it has been stated that the "components imported by the petitioner-firm are scientific instruments -- and televisual apparatus and goods." It has also been stated that "the picture tube (monitor screen) of the computerised electronic industrial process control instrument is nothing but closed circuit television set". Even if this is interpreted as an effort to improve upon the case, it cannot change the real issue. The petitioner can succeed only if it proves that the goods are not covered under entry 76. The fact that the respondents have described the goods differently in the written statement is of no consequence.

14. It appears to be settled that the validity of the order passed by the authority has to be judged on the findings recorded therein. The explanation that -may be subsequently rendered by filing an affidavit or written statement is of no use. Consequently, the only question that has to be examined is: Are the components imported by the petitioner scientific instruments -- and televisual apparatus or goods?

15. Mr. Lekhi has-referred to the Business Dictionary by P. H. Collin. At page 149,

an instrument has been described as under:--

"tool or piece of equipment; the technician brought instruments to measure the output of electricity."

He contended and it appears rightly that a scientific instrument is a tool or piece of equipment which can be used by itself. None of the components imported by the petitioner in the present case can be described as instruments. Consequently, these cannot be described as scientific instruments. However, it has still to be examined if these components can be described as televisual apparatus and goods? Mr. Lekhi was at pains to point out that televisual apparatus or goods are unknown to the trade. On the other hand, Mr. Sibal contended that the consignment in question answers the description of televisual goods. He contended that suffix "al" in English language means "of the kind" of. According to the learned counsel, "televisual" implies "pertaining to television". He contended that the components imported by the petitioner are goods pertaining to television and thus the items in question are squarely covered by entry No. 76.

16. According to Webster's Third New International Dictionary (Unabridged), the suffix "al" means: "of, relating to, or characterized by" as in "directional, fictional, hormonal, organizational spectral tidal." Thus televisual would relate to television. This is how it is actually described in Chambers Twentieth Century Dictionary (New Edition). Consequently, it can be said that televisual in its ordinary sense means "relating to" television.

"Goods" according to Webster's Dictionary means! "tangible movable personal property having intrinsic value -- of chatties, wares, merchandise, food products, chemical compounds and agricultural products" as in house-hold goods, According to Black's Law Dictionary (Sixth Edition), the expression goods has been inter alia described as under:--

"A term of variable content and meaning. It may include every species of personal property or it may be given a very restrictive meaning.

Items of merchandise, supplies, raw materials, or finished goods. ; Sometimes, the meaning of "goods" is extended to include all tangible items....."

"Apparatus" according to Webster's Dictionary (supra) means:

"a collection or set of materials, instruments, appliance or machinery designed for a particular use -- any compound, instrument or appliance designed for a particular mechanical or chemical action --"

17. Even if it is assumed that the various items in the consignment are not "apparatus" relating to television, these are certainly the "raw materials" which can be used for making a television. The components are goods pertaining to television. In fact in para 5 of the replication, it has been averred that "merely because some components imported by the petitioner are used in the manufacture of television sets, the components -- would not become televisual

apparatus and fall under Serial No. 76 of the Octroi Schedule". It can be inferred that the imported articles can be used in the manufacture of television sets. These are raw material for television sets and can consequently be covered by entry No. 76 in the Schedule of Tariff. As such, it cannot be said that the goods are covered by the residuary entry.

18. Reg: Contention (3):

It is true that the taxing statutes have to be strictly construed, if two interpretations are possible, the one that favours the assessee is normally accepted. However, in view of the above finding regarding contention (2), it cannot be said that the impugned order of assessment is ultra vires because it is based on a wrong hypothesis. Since "televisational" means "pertaining to tele.vi.sion", the contention raised by the counsel, cannot be accepted.

19. Reg: Contention (4):

It has been contended that the industrial process control instrument is a piece of equipment connected with the machinery and is not even remotely linked with television. This contention is based on the assumption that the octroi has to be levied on the end product. This is not so. The taxable event is the entry of goods for use, sale or consumption". It has no relation to the actual user. The goods imported by the petitioner may be used for any purpose. Once the components are accepted to be "televisational goods", the use to which the petitioner puts the said goods is wholly irrelevant. Consequently, the contention is misconceived and cannot be accepted.

20. Reg: Contention (5):

It was contended by the learned counsel for the petitioner that the impugned order has been passed in total disregard of the licence granted to the petitioner under the Industries (Development and Regulation) Act, 1951. According to Mr. Lekhi, the goods manufactured by the petitioner fall under entry No. 15(2) of the First Schedule to the 1951 Act. This may be so., As already observed, the use to which goods are put is irrelevant. As such, it is of no consequence that the petitioner has been granted a licence in respect of goods covered under item No. 15(2), of the Schedule.

21. Even otherwise, the 1951 Act and the Rule Schedule are not statutes which can be said to be in "pan materia". These do not pertain to the same subject matter. The provisions having been enacted for different purposes, the fact that the petitioner is manufacturing a particular instrument which may not be a television set, is of no consequence.

22. Reg: Contention (6):

Lastly, it was contended that vide notification dated April 22, 1992, entry No. 76 has been amended so as to include "the industrial processes control instruments and parts thereof". According to the learned counsel, this was an intrinsic

evidence of the fact that the "instruments" or parts thereof were not initially included under entry No. 76.

23. This contention also cannot be accepted. As already observed, the goods imported by the petitioner are covered by entry No. 76. The action of the authorities in amending this entry vide notification dated April 22, 1992, cannot be interpreted to mean that the components imported by the petitioner do not fall within the particular item. The amendment may have been made, as it appears to have been, to put everything beyond a shadow of doubt. It cannot, however, be said to mean that the factum of amendment itself vitiates the assessment.

24. No other point was urged.

25. Accordingly, there is no merit in this petition. It is dismissed. In the circumstances of the case, there shall be no order as to costs.

26. Petition dismissed.