IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 165 of 2019 (O&M)
Date of decision: 13.1.2020

Excise and Taxation Commissioner, Haryana
.. Appellant

v.

M/s Nivachem Pvt. Ltd. and another
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana for the appellant.

...

AVNEESH JHINGAN, J.

The Excise and Taxation Commissioner, Haryana is in appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (for short, 'the 2003 Act') against the order dated 15.5.2018 passed by the Haryana Tax Tribunal, Chandigarh (for short, 'the Tribunal') claiming following substantial questions of law:

"(a) Whether in the facts and circumstances of the present case the Haryana Tax Tribunal was justified in interpreting Entry 25 of Schedule C of HVAT Act.

(b) Whether in the facts and circumstances of the present case the Haryana Tax Tribunal was justified in holding that Black Disinfectant Fluid (BDF) is covered by Entry 25 of Schedule C of HVAT Act and is therefore leviable to tax at concessional rate as Schedule C item, whereas the Entry 25 of the HVAT Act deals with specific items and BDF does not found mentioned therein.

(c) Whether in the present facts and circumstances of the case the Haryana Tax Tribunal was justified in holding that Black Disinfectant Fluid falls in the category of Drug as mentioned in Entry 25 of Schedule C of HVAT Act.

(d) any other questions of law which the Hon'ble Court deems fit in the present facts and circumstances of the case."

The pin pointed issue involved in the present appeal is:

"Whether the Black Disinfectant Fluid (for short, 'BDF') is covered under Entry 25 of Schedule C of the 2003 Act?"

Entry 25 of Schedule C is reproduced below:

"25. Bulk drugs, drugs, medicines, vaccines, medicated ointments produced under drug licence, light liquid paraffin of IP grade, syringes, dressings, glucose-D, oral re-hydration salt, medical equipments/devices and implants, surgical tables and surgical lights used for surgery of patients in the operation theatre."

The answer to the question is against the revenue and in favour of the assessee i.e. BDF is covered under Entry 25 of Schedule C of the 2003 Act.

The facts in brief are that the assessment year involved is 2008-09. The assessee is manufacturing amongst other things BDF under the licence issued under the Drugs and Cosmetics Act, 1940 (for short, 'the 1940 Act'). During the proceedings of assessment, a notice was issued by the Assessing Authority, to show cause as to why BDF be not taxed

@ 12.5% treating the same to be falling under the residuary entry. The assessee filed reply along with copy of the licence issued under the 1940 Act and placed reliance upon the definition under Section 3(b) of the said Act. The Assessing Authority rejected the contention vide order dated 29.3.2012 and held that BDF is neither covered under Entry 25 of Schedule C of the 2003 Act nor under Entry 38B of Schedule B of the 2003 Act. Consequently, BDF was taxed @ 12.5% and interest was also charged.

Entry 38B of Schedule B of the 2003 Act is as under:

> "38B Pesticides, weedicides, insecticides used for plants only."

It would be pertinent to mention here that it was never the case of the assessee that BDF was covered under Schedule B of the 2003 Act.

The appeal preferred against the assessment order was dismissed by 1st Appellate Authority vide order dated 29.5.2015. Further appeal was filed and the Tribunal on 15.5.2018 allowed the appeal of the assessee and held that BDF is covered under Entry 25 of Schedule C of the 2003 Act, hence the present appeal.

Learned counsel for the State argued that the Tribunal erred in holding that BDF is covered under the term 'drugs' mentioned in Entry 25 of Schedule C of the 2003 Act. The contention is that the intention of the Legislature was to cover the drugs and allied products used for human beings/animal consumption and BDF is not specifically mentioned in the Entry. To fortify the contention, it is submitted that merely BDF is regulated under the 1940 Act, that would not change the meaning of drug as mentioned in Entry 25 of Schedule C.

The contentions raised cut no ice.

The proposition is well settled by catena of judgments of Supreme Court that for interpretation to the Entries in fiscal statute, common parlance test is to be applied. In other words, as the goods are understood by the people dealing with it.

In **Mukesh Kumar Aggarwal & Co. v. State of M. P., 1988 Supp SCC 232,** it was observed:-

> "6. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense understood in common parlance i.e. "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". Such words must be understood in their "popular sense". The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists."

In **M/s Gulati and Co. v. The Commissioner of Sales Tax, U.P., Lucknow, 2014(14) SCC 286**, it was observed as under:

> "17. It is trite that there is no fixed test for classification of a taxable commodity and the most commonly employed is the "***common parlance*** test". Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to

determine how such an article is understood in "***common parlance***" or in its popular sense meaning. That is to say, comprehending the term in same context as those who are concerned with it and it is that the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted. (***A. Nagaraju Bros. v. State of A.P., 1994 Supp (3) SCC 122; Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1996) 2 SCC 449; CCE v. Wockhardt Life Sciences Ltd., (2012) 5 SCC 585).***

18. The use of "***common parlance***" test and its advantage over the "etymological" test has been very aptly explained by this Court in context of term "furniture" in ***Craft Interiors (P) Ltd. v. CCE, (2006) 12 SCC 250***. This Court has observed as under:

> "18. We may add that sometimes chairs, beds, tables, desks, etc. are affixed to the ground, but nevertheless they will still be called as furniture (one may recall the fixed bed in Sherlock Holmes story "The Speckled Band"). This is because when we interpret a word we should not only see the dictionary meaning but even more the popular meaning which the word has acquired in ***common parlance***. As stated by K. L. Sarkar (in his book Mimansa Rules of Interpretation) "the popular meaning overpowers the etymological meaning".

19. To give an example, the word "pankaja" literally means born in mud. The word "panka" means "mud" and the word "ja" means "which is born in". Hence the etymological meaning of the word "pankaja" is that "which is born in mud". Many things can be born in mud e.g. Insects, vegetation, water flowers, etc. However, by popular usage the word "pankaja" has acquired a particular meaning in ***common parlance*** i.e. lotus. This meaning will, therefore, prevail over the etymological meanings.

20. Similarly, the word "furniture" has a meaning in ***common parlance*** which every layman understands. It commonly refers to chairs, desks, tables, beds, etc. Hence we should give it this popular meaning."

19. In our considered view, the words with which we are concerned must be construed in the sense which is imputed to them by the persons who deal in and who consume such articles and therefore, we should now explore the meaning and usage of terms "foodstuffs", "food colours" and "food essences" in their ***common parlance.***"

In **Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant (P) Ltd., New Delhi, 2012 (13) SCC 639**, it was held as under:

"18. Time and again, the principle of ***common parlance*** as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of ***common parlance*** test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law maker; "it is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts."

The term 'drug' is not defined under the 2003 Act but Section 3(b) of the 1940 Act defines the same. The same is reproduced below:

"**3. Definitions.-** In this Act, unless there is anything repugnant in the subject or context,-

xx xx xx

(b) "drug" includes--

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the

Central Government by notification in the Official Gazette;

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board;”

The said definition is widely worded, it includes medicines for internal or external use by human beings/animals and it covers all substances intended to be used for prevention of any disease in humans or animals.

In the absence of definition under the 2003 Act, reliance was rightly placed by the Tribunal on definition under Section 3(b) of the 1940 Act, as it shows as to how the people dealing with the said goods understand the same.

The argument that the Entry 25 of Schedule C will apply only to the products that are for consumption of human beings or animals does not emanate from the Entry. The requisites are that it should be 'drug' and produced under the licence. BDF is covered under definition of 'drug' and the assessee is a licensee under the 1940 Act.

The conclusion arrived at by the Tribunal is in consonance with common parlance test. The assessee produced letter dated 7.1.2016 received from the Assistant State Drug Controller, Haryana under the Right to Information Act,2005. The letter stated that BDF is manufactured under Schedule O of the 1940 Act and falls in the category of 'drugs' defined in Section 3(b) of the said Act. The information is provided by the official of the office dealing with the said product and issuing licence under the 1940 Act for manufacture of BDF.

There is no contradiction by the State to the contention that BDF is used as a disinfectant to sterilize houses, hospitals, veterinary hospitals etc. and that the product is also applied to the wounds of animals to kill maggots, worms etc. in the wounds.

There is another aspect of the matter. The case of the appellant is that BDF be treated to be covered under the residuary entry. The contention lacks merit. Resort to residuary entry can only be made if the product is not covered under a specific Entry. As discussed above, BDF is covered under Entry 25 of Schedule C of the 2003 Act.

In **Commercial Taxes Officer v. Jalani Enterprises**, 2011 (4) SCC 386, Supreme Court held as under:

> "17. .... It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to the residuary entry. If from the records it is established that the product in question could be brought under a specific entry then there is no reason to take to the residuary entry........."

In view of the above, no interference is called for in the order of the Tribunal.

The appeal is dismissed.

The appeal is accompanied by an application for condonation of delay of 274 days, as the matter has been considered on merits, no separate order is being passed in the application for condonation of delay.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

13.1.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No