201 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 704 of 2005 (O&M)
DECIDED ON:FEBRUARY 26, 2020

M/S SUN PHARMACEUTICAL INDUSTRIES LTD.

APPELLANT

VERSUS

MUNICIPAL COUNCIL, SAS NAGAR, MOHALI

RESPONDENT

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

Present: Mr. Anand Chhiber, Sr. Advocate with
Mr. J.S. Bhatia, Advocate and
Ms. Shreya Bhakoo, Advocate
for the appellant.

Ms. Anu Chatrath, Sr. Advocate with
Mr. Amarpreet Singh Bains, Advocate
for the respondent.

AJAY TEWARI, J (Oral):

This appeal has been filed against the judgments of the courts below dismissing the suit filed by the appellant where it had sought an injunction that respondent could not charge octroi on chemicals under Entry 40(e) of Schedule of Punjab Municipal Act, 1911 but it being purchased under Entry 40(a).

2. Both the courts below held that the onus to prove is that items fell within Entry 40(a) and not in Entry 40(e), lay on the appellant and further held that the appellant was not able to prove the same. The second argument of the appellant that for a period of 13 long years the goods had been assessed to octroi under item 40(a) did not yield the findings in its favour.

3. Aggrieved therefrom, the present appeal has been filed.

4. The appeal was dismissed by this Court vide judgment dated

18.02.2005. The matter was taken to Supreme Court, the judgment of this Court was set aside and the matter was remitted back for the disposal of appeal after framing substantial questions of law.

5. The appeal was admitted vide order dated 03.11.2008 for consideration of following substantial questions of law:

(i) Whether the onus of proof of taxability is on the assessee or upon the assessor?

(ii) Whether the terms used in a fiscal or taxing statute that is not defined in the statute itself such as the term "Heavy Commercial Chemical" is to be interpreted in a manner as understood in the commercial parlance of those such as the Appellant who deal with said goods?

(iii) Whether an act of the assessor which has been continuous and unabated for a long period of time such as that of the assessor in the instant case of treating the goods of the Appellant as falling under Entry 40(a) of the Schedule to the PMC Act, can be permitted to be reprobated from merely on the reasoning that the same was a "mistake"?

(iv) Whether Entry 40(a) of the Schedule to the PMC Act is inclusive in nature and whether Entry 40(e) of the Schedule to the PMC Act is residuary in nature?

6. To decide the issue involved in the present appeal, question No.1 would suffice.

7. In our considered opinion the appeal has to be allowed for the following reason:

(i) It is trite law that onus of proof of taxability is always on the assessor and not on assessee. Reference in this regard may be made to the judgment of the Supreme Court rendered in ***Union of India & others vs. Garwere Nylons Ltd. and others;*** ***(1996) 10 SCC 413.*** Relevant part of the judgment reads as under:-

> "*15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in a case as this, where the claim of the assessee is borne out by the trade inquiries received by them and also the affidavits filed by persons dealing with the subject matter, a heavy burden lay upon the revenue to disprove the said materials by adducing proper evidence. Unfortunately, no such attempt was made. As stated, the evidence led in this case conclusively goes to show that Nylon Yarn manufactured by the assessees has been treated as a kind of Nylon Tarn by the people conversant with the trade. It is commonly considered as Nylon Yarn. Hence, it is to be classified under Item 18 of the Act. The Revenue has failed to establish the contrary. We would do well to remember the guidelines laid down by this Court in Dunlop India Ltd. v. Union of India (AIR 1977 SC 597 - at page 607), in such a situation, wherein it was stated:-*
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> *"......... When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."*

Resultantly, it has to be held that the onus lies on the respondent-department.

(ii) In the present case the evidence led by the respondent was in the shape of testimony of its Superintendent, who had neither claimed nor had any evidentially knowledge of the subject.

8. Thus, this issue is decided against the respondent. The suit had to be decreed.

9. As the question No.1 has been decided in favour of the appellant, there is no necessity to deal with the other substantial questions of law framed.

10. Consequently, the appeal is allowed and judgments of the courts below are set aside and the suit filed by the appellant is decreed.

11. Since the main appeal is decided, all the pending civil applications are disposed of.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 26, 2020
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No