

Before : G. C. Mital & G. S. Chahal, JJ.

M/S. HINDUSTAN SYRINGES PRIVATE LIMITED, FARIDABAD,
—Appellant.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Letters Patent Appeal No. 1413 of 1989.

6th August, 1990.

Haryana Municipal Act, 1973—S. 99—Faridabad Complex (Regulation and Development) Act, 1971—S. 21, Octroi Schedule Entry 76, 138, 145—Appellants manufacturing syringes out of glass tubes after processing—Glass tubes—Whether can be termed as scientific instruments or surgical goods.

Held, that it will be a strain on the language to bring the glass tubes, in the classification of surgical syringes. The syringe is only a finished good that can be used by a doctor or a pharmacist for injecting drugs. A plain tube cannot be described to be either surgical instrument or surgical goods. Admittedly, manufacturing process has to be carried out to make syringes out of the tubes and for purposes of octroi duty, the condition of the tubes is to be examined, as they exist at the time of import and whether in common parlance these tubes will be described to be scientific instruments or glass tubes.

(Para 4)

Letters Patent Appeal under Clause X of the Letters Patent of the High Court against the Judgment of Hon^{ble} Mr. Justice J. V. Gupta, dated 30th May, 1989, dismissing Civil Writ Petition No. 5056 of 1988.

R. S. Mittal, Sr. Advocate, with P. S. Bajwa and R. S. Surjewala, Advocates, with him, for the Appellant.

S. C. Mohunta, A.G. Haryana with S. K. Sood, D.A. Haryana, for the Respondents.

JUDGMENT

G. S. Chahal, J.

(1) The present Letters Patent Appeal has been preferred against the judgment of the learned Single Judge dated 30th May, 1989,—*vide* which Civil Writ Petition No. 5056 of 1988 brought by the present appellant was dismissed.

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(2) M/s Hindustan Syringes Private Limited, Faridabad (hereinafter called the appellant-Company) brought a civil writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the order dated 4th May, 1988, copy Annexure P8, passed by the Commissioner, Ambala Division, Ambala Cantt., respondent No. 3. The appellant Company pleaded that it was running an industry at NIT, Faridabad and was manufacturing syringes from glass tubes which it was purchasing from indigenous sources, as well as by import from foreign countries. Glass tubes are manufactured by M/s Borosil Glass Works Limited, Bombay and these goods are used for making tubes, pipetts, condensers, vials etc., depending upon the manufacturers or persons who prepare the finished goods out of the raw material, namely glass tubes. The appellant Company is manufacturing medical syringes from the tubes which it purchases from M/s Borosil Glass Works Limited, Bombay. These goods are duly invoiced and are exciseable goods and the manufacturing Company gets a clearance from the Excise Department by paying 40 per cent duty under the head "Glass and Glass Tubes". These tubes are finished goods for M/s Borosil Glass Works Limited, but are raw material for the appellant-Company. The Excise Department has already differentiated glass tubes from syringes and charges 40 per cent duty on glass tubes, whereas it charges 15 per cent duty on the sale of syringes. The glass tubes received from the manufacturing Company are in the length of 5 feet or more. The tubes are not of uniform diameter either inner or outer. These are cut into pieces of the required sizes for manufacturing barrels and plungers, the two parts of the syringes. These pieces are cut and then sorted out and are also checked for their diameters manually with respect to the inner diameter and with the help of some automatic machines regarding the outer diameter. The details of the cut-pieces used for barrels and plungers are further detailed as under :

BARRELS

1. Flange forming
2. Tip forming
3. Shrinking
4. Pringing
5. Baking
6. Tip cutting and tip grinding

PLUNGERS

1. Bottom sealing
2. Head forming
3. Bottom Marking
4. Annealing
5. Grinding
6. Lepping

Glass tubes are called raw material for manufacturing syringes. Faridabad which was originally a notified area committee, was converted into a Municipal Committee and thereafter, a schedule was imposed in the year 1962. The Municipal Committee assessed octroi duty on the basis of weight. Subsequently, the Faridabad Complex Administration issued its own Octroi Schedule under its own rate Schedule u/s 21 of the Faridabad Complex (Regulation and Development) Act, 1971 which was sanctioned by the Haryana Government,—vide Notification No. 2389-ICI-72/10750 dated the 7th April, 1972. This Octroi Schedule consists of 145 entries, the relevant of which are as follows :

“Class VII. Scientific apparatus, Instruments of Music and measurement.

“76. All kinds of scientific, mathematical, Optical, Surgical and dentistry instruments and equipments including telephonic, telegraphic and televisual apparatus and goods 0-2 per rupee.

Class XVII. (Miscellaneous)

138. Crockery and Glass-ware 5.60 per 110 kg.

145. All other articles not otherwise exempted and not chargeable under any other head 5.60 per 100 kgs.”

Upto 16th May, 1987 respondent No. 2 charged octroi on glass tubes under its item No. 138 at the rate of Rs. 5-60 per 100 kg. along with surcharge at the same rate. However, on 16th May, 1987 when the transporters were bringing glass tubes purchased by the appellant-Company, the Faridabad Octroi Post Officials stopped them and in spite of protest, charged the same under item No. 76 at 0-2 paise per rupee and only after charging this octroi, the import was allowed. The appellant-Company then filed a representation before the Chief Administrator-respondent No. 2 on 23rd May, 1987 who ultimately passed the orders on 3rd July, 1987 holding on the basis of the gate pass issued for removal of exciseable goods from the premises of M/s Borosil Glass Works Limited, Bombay that the tubes are described in the gate passes as syringe tubing and tubing are, therefore, liable for octroi-duty under item No. 76 of the Schedule. This order is annexure P1. The appellant-Company challenged this

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order of the Chief Administrator-respondent No. 2 before the Commissioner-respondent No. 3 u/s 99 of the Haryana Municipal Act and also prayed for interim stay. The Commissioner-respondent No. 3, however, did not grant the stay and the appeal was not disposed of. Civil Writ Petition No. 8547 of 1987 was then presented to this Court in which a direction was issued to the appellant-Company to exhaust the statutory remedy of appeal and the Commissioner-respondent No. 3 was directed to dispose of the appeal within two months. The Commissioner dismissed the appeal on 4th May, 1988,—vide order Annexure P8, holding that the item syringe tubing necessarily falls under Scientific or Surgical goods, because syringe tubings necessarily were scientific or surgical goods. Feeling aggrieved, the appellant-Company challenged this order through CWP 5086/1989 and *inter alia* pleaded that the tube is only raw material for manufacturing surgical syringes.

(3) The plea of the appellant-Company that the glass tubes imported were only glass-tubes and not surgical syringes or surgical instruments or surgical goods did not find favour with the learned Single Judge and the writ petition was dismissed.

(4) The learned counsel for the appellant-Company has urged before us that the glass tubes are manufactured by M/s Borosil Glass Works Limited, Bombay in the form in which they are received by it and cannot, by any stretch of imagination, be described to be surgical goods, but are only raw material for the manufacture of surgical goods. Before these tubes take the form of surgical syringes, a process has to be carried out and from the tubes, barrels and plungers are manufactured. For purposes of barrels, he claims that the following processes have to be performed to manufacture the syringes:

“.....The tubes are cut into pieces of the required sizes for manufacturing barrels and plungers, the two parts of the syringe. The pieces so cut are then sorted out according to their outer and inner diameter and checked in special purpose classification machine in so far as outer diameter is concerned, while inner diameter is checked manually with the help of ‘go and no go’ guage.”

After undergoing the entire process, these tubes become surgical instruments. The tubes as received from the supplier has not even the semblance of any surgical instrument. By whatever name

the manufacturer may call it, the tubes can only be described as glass tubes. He further urges that entry No. 76 of the Octroi Schedule relates to scientific, mathe-material, optical, surgical and dentistry instruments and equipments, including telephonic, tele-graphic and televisual apparatus and goods. —“Even if the term ‘goods’ is read in conjunction with the terms ‘scientific, mathe-material, optical, surgical and dentistry instruments etc.’, it will not make a difference, as the glass tubes cannot be described to be forming part of scientific, optical, surgical, mathe-material or dentistry goods. Before proceeding further, we would like to refer to the observations of their Lordships of the Supreme Court in *M/s Mukesh Kumar Aggarwal & Co., v. State of M.P.* (1). In this case, a question had arisen whether stacks of “eucalyptus-wood utility goods, after separating the “Ballies” and “Poles” can answer the description of ‘timber’ under entry 32-A of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. Their Lordships were of the view that this entry could not fall under the term ‘Timber’ and observed as under:—

“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 as 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”. The expression ‘Timber’ has an accepted and well recognised legal connotation and is *nomen juris*. It has also a popular meaning as a word of everyday use. In this case, the two meanings of ‘Timber’ the legal and the popular, coalesce and are broadly subsumed in each other.”

We are of the view that it will be a strain on the language to bring the glass tubes, in the classification of surgical syringes. The

(1) A.I.R. 1988 SC 563.

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syringe is only a finished good that can be used by a doctor or a pharmacist for injecting drugs. A plain tube cannot be described to be either surgical instrument or surgical goods. Before the learned Single Judge, the learned counsel for the respondents had urged that the glass tubes are used in the manufacture of syringes after minor operations, but structurally they remain the same and, therefore, the said goods fall under entry at Serial No. 76. The same line of argument has been adopted by the learned counsel before us. It is difficult to endorse this argument of the learned counsel. Admittedly, manufacturing process has to be carried out to make syringes out of the tubes and for purposes of octroi duty, the condition of the tubes is to be examined, as they exist at the time of import and whether in common parlance these tubes will be described to be scientific instruments or glass tubes. The definition of 'scientific instruments' as given at page 419 of the Corpus Juris Secundum, Volume XIV, reads as follows:

“The principle definitions have been given for this phrase, one considering the use of the instrument and the other intrinsic character or nature as the determining factor. From the latter stand point the phrase has been defined as any instrument which is ordinary definition or in the acceptance of experts, would fall within that category and it has been said that what is not such an instrument is to be determined according to the nature of the thing itself and not necessarily according to the use for which it is primarily designed or in which it is primarily employed, and from the standpoint of use it has been defined as embracing such instruments as are specially designated for use, and principally employed, in any branch of science, either for the purpose of observation, experiment, or instruction, or in connection with the professional, practice of a particular science. The term has been compared with, or distinguished from 'mechanical instruments or implements' see supra note 97 and 'philosophical instruments or apparatus' see supra note 7

Judged in the light of this definition, glass tubes as they exist at the time of being brought into the Industrial Area of Faridabad, cannot be described to be anything else, but glass tubes and not scientific instruments. These glass tubes are neither scientific instruments nor equipment and cannot be charged under entry

No. 76 *ad valorem*, but are to be charged under item No. 145 per weight. We hereby accept the appeal and after setting aside the judgment of the learned Single Judge, allow the writ petition and quash the order dated 4th May, 1988 Annexure P-8. No costs. The excess amount recovered by Chief Administrator-respondent No. 2 shall be refunded to the appellant-Company within three months.

P.C.G.

Before : Gokal Chand Mital & S. S. Sodhi, JJ.

M/S. DES RAJ KUL BHUSHAN,—Applicant

versus

THE COMMISSIONER OF INCOME-TAX, JULLUNDUR
—Respondent

Income Tax Reference No. 60 of 1981.

19th April, 1989.

Income-tax Act, 1961—Ss. 143(3), 144-B, 145, 147, 153(1), (2) & (2-A), 251(1)(a), 256(1), 271(1)(c) & 273—Draft assessment served on assessee treated as final—I.T.O. adding more than one lac rupees—Assessee not filing objections—Procedure enshrined under S. 144-B not followed—Validity of such order—Remand order by C.I.T.—Valid.

Held. that the Tribunal and Commissioner of Income Tax (Appeals) were right in coming to the conclusion that it was not a draft order under S. 144-B of the Income-tax Act, 1961, but was a final order under S. 143(3) of the Act, and since the Income Tax Officer had made additions of more than a lac of rupees, although he had the jurisdiction to add more than a lac of rupees, this he could do by following the procedure laid down in S. 144-B of the Act and not in the manner he has done in this case. Once order dated 29th March, 1976 was not a draft order and was a final order, the assessee was not obliged to file objections within 7 days of the receipt of the order and thus the order dated 7th April, 1976 passed by the Income Tax Officer also could not be allowed to stand. Whether provisions contained in S. 144-B of the Act, are called mandatory or statutory, the result is the same, namely that if the Income Tax Officer wants to add more than a lac of rupees in the returned income, he has to follow the procedure contained in S. 144-B of the Act, before doing so.

(Para 3)