

## **Indo International Industries vs Commissioner Of Sales Tax, Uttar ... on 25 March, 1981**

**Equivalent citations: 1981 AIR 1079, 1981 SCR (3) 294, AIR 1981 SUPREME COURT 1079, 1981 TAX. L. R. 2963, 47 STC 338, (1981) 47 STC 338, 1981 UJ (SC) 372, 1981 ELT 325 (SC), 1981 SCC (TAX) 130, 1981 UPTC 481, 1981 STI 202, (1981) 2 SCJ 135, 1981 (2) SCC 528**

**Author: V.D. Tulzapurkar**

**Bench: V.D. Tulzapurkar, E.S. Venkataramiah, Amarendra Nath Sen**

PETITIONER:

INDO INTERNATIONAL INDUSTRIES

Vs.

RESPONDENT:

COMMISSIONER OF SALES TAX, UTTAR PRADESH.

DATE OF JUDGMENT 25/03/1981

BENCH:

TULZAPURKAR, V.D.

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TULZAPURKAR, V.D.

VENKATARAMIAH, E.S. (J)

SEN, AMARENDRA NATH (J)

CITATION:

1981 AIR 1079                      1981 SCR (3) 294

1981 SCC (2) 528                1981 SCALE (1) 582

CITATOR INFO :

R                1985 SC1387 (11)

R                1985 SC1644 (7)

RF              1986 SC1730 (8)

RF              1988 SC1087 (8)

RF              1991 SC 999 (14,15)

ACT:

Uttar Pradesh Sales Tax Act, 1948, Entry No. 39 of the First Schedule thereto-"Hypodermic clinical syringes"-whether a glass ware.

HEADNOTE:

Upto November 30, 1973, there were two competing

entries in the First Schedule to the U. P. Sales Tax Act, 1948, so far as the item "hypodermic clinical syringes" is concerned, namely, Entry 39 which ran: "Glass wares other than hurricane lantern chimneys, optical lenses and bottles" and Entry 44 which ran: "Hospital equipment and apparatus" and for an item falling under the former the rate of tax was 10% while under the latter the rate of tax was 4% and for an unclassified item the rate was 3-1/2% From December 1, 1973 onwards Entry 44 was deleted and, therefore, if the clinical syringes did not fall within entry 39 it became an unclassified item under section 3A(2A) of the U.P. Sales Tax Act, 1948 and the rate of tax was 7%. In view of this position that obtained for the relevant periods during the assessment year 1973-74 the appellant-assessee had claimed before the assessing authorities that its turnover in respect of syringes for the period up to November 30, 1973 was liable to tax at 3-1/2%, as an unclassified item or in the alternative at 4% as "hospital equipment" under Entry 44 and its turnover for the period from December 1, 1973 to March 31, 1974 was liable to be taxed at 7% as an unclassified item. But, negating its contentions the entire turnover was held to be taxable at the rate of 10% on the basis that clinical syringes fell within the expression "glass ware" occurring in Entry 39 and hence the appeal by special leave on the question whether hypodermic clinical syringes could be regarded as glass ware.

Allowing the appeal, the Court

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HELD: 1. The assessee's turnover up to November 30, 1973 will fall under Entry 44 dealing with "hospital equipment" and the same would be taxable at the rate of 4% and its turnover from December 1, 1974 will be taxable at the rate of 7% as an unclassified item. [298 H]

2: 1. It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined

295

but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. [297 C-D]

Ramavatar Budhiaprasad etc. v. Assistant Sales Tax Officer, Akola, [1961] 1 SCR 297 and Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh, [1967] 2 SCR 720, followed.

2 : 2. The clinical syringes which the assessee manufactures and sells cannot be considered as "glass ware"

falling within Entry 39 of the First Schedule of the Act. (a) In commercial sense, glass ware would never comprise articles like clinical syringes, thermometers, lactometers, and the like which have specialised significance and utility: (b) in popular or commercial parlance a general merchant dealing in "glass ware" does not ordinarily deal in articles like clinical syringes, thermometers etc. which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee; (c) it is equally unlikely that consumer would ask for such articles from a glass ware shop. Further in popular sense when one talks of glass ware such specialised articles like clinical syringes do not come up to one's mind. [298 E-F]

State of Orissa v. Janta Medical Stores, 37 STC 33, approved.

Commissioner of Sales Tax v. S.S.R. Syringes and Thermometers, 1973 Law Diary 178, overruled.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 151 of 1981.

Appeal by Special Leave from the Judgment and Order dated 16.8.1969 of the Addl. Judge (Revisions) Sales Tax, Saharanpur in Revision Appln. No. 1688/78.

J. Ramamurthi and Miss R. Vaigai for the Appellant. S. C. Manchanda. B. P. Maheshwari and Suresh Sethi for the Respondent.

The Judgment of the Court was delivered by TULZAPURKAR, J. This appeal by special leave raises the question whether hypodermic clinical syringes could be regarded as "glass ware" under Entry No. 39 of the First Schedule to U.P. Sales Tax Act, 1948 ?

The facts giving rise to the question lie in a narrow compass. The appellant firm (hereinafter called the assessee) manufactures and sells hypodermic clinical syringes. For the assessment year 1973-74 the assessee filed a return disclosing net U.P. sales of such syringes at Rs. 95,065. The disclosed turnover was accepted by the Sales Tax Officer, Sector III Muzaffarnagar, but as regards the rate of tax the assessee contended that the clinical syringes in respect of their turnover of Rs.91,513 up to November 30, 1973 should be regarded as an unclassified item and taxed at the rate of 3-1/2% or at 4% as "hospital equipment and apparatus" under Entry 44 of the First Schedule to the Act and on the turnover of Rs. 3,552/-for the period from December 1, 1973 to March 31, 1974 at the rate of 7% as an unclassified item. The Sales Tax Officer, however, treated the syringes as "glass ware" and taxed the entire turnover of Rs.95,065/- at the rate of 10% under Entry No. 39 of the First Schedule. The said assessment was upheld in appeal by the Assistant Commissioner (Judicial), Sales Tax, Muzaffarnagar and also in revision by the Additional Judge (Revision), Sales Tax, Saharanpur on August 16, 1979. It is this view taken by the assessing authorities as well as by the Additional Judge

in revision that is being challenged by the assessee before us in this appeal.

It may be stated that up to November 30, 1973 there were two competing entries in the First Schedule to the U.P. Sales Tax Act so far as the item in question is concerned, namely, Entry 39 which ran: "Glass wares other than hurricane lantern chimneys, optical lenses and bottles" and Entry 44 which ran: "Hospital equipment and apparatus" and for an item falling under the former the rate of tax was 10% while under the latter the rate of tax was 4% and for an unclassified item the rate was 3 1/2%. From December 1, 1973 onwards Entry 44 was deleted and, therefore, if the clinical syringes did not fall within Entry 39 it became an unclassified item under s. 3A (2A) of the Act and the rate of tax was 7%. In view of this position that obtained for the relevant periods during the assessment year 1973-74 the assessee had claimed before the assessing authorities that its turnover in respect of syringes for the period up to November 30, 1973 was liable to tax at 3 1/2% as an unclassified item or in the alternative at 4% as "hospital equipment" under Entry 44 and its turnover for the period from December 1, 1973 to March 31, 1974 was liable to be taxed at 7% as an unclassified item. But, negating its contentions the entire turnover was held to be taxable at the rate of 10% on the basis that clinical syringes fell within the expression "glass ware" occurring in Entry 39. Counsel for the assessee contended before us that in the absence of any definition of "glass ware" in the Act that expression must be understood in the ordinary commercial parlance and not in any scientific and technical sense and if such test were applied to the instant case then clinical syringes manufactured and sold by the assessee could never be regarded as "glass ware". Counsel pointed out that the Revising Authority negated the contention of the assessee in view of a decision of the Allahabad High Court in the case of Commissioner of Sales Tax v. S. S. R. Syringes and Thermometers but urged that the contrary view taken by the Orissa High Court in the case of State of Orissa v. Janta Medical Stores that thermometers, lactometers, syringes, eye-glasses, etc. do not come within the meaning of the expression "glass ware" in Entry No. 38 in the Schedule to the relevant Notification issued under the first proviso to s. 5(1) of the Orissa Sales Tax Act, 1947 was correct. In our view counsel's contention has considerable force and deserves acceptance.

It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. In *Ramavatar Budhiaprasad, etc. v. Assistant Sales Tax Officer, Akola* the question was whether 'betel leaves' fell within item 'vegetable' so as to earn exemption from sales tax and this Court held that word 'vegetable' had not been defined in the Act, and that the same must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance and so construed it denoted those classes of vegetable matter which are grown in kitchen garden and are used for the table and did not comprise betel leaves within it and, therefore, betel leaves were not exempt from taxation: In *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* the question was whether the item 'coal' under Entry 1 of Part III of Second Schedule to Madhya Pradesh General Sales Tax Act, 1958 included charcoal or not and this Court observed thus:

"Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manu-

factured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense."

Viewing the question from the above angle this Court further observed that both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term "coal", and held that 'charcoal' fell within the concerned Entry No. 1 of Part III of Schedule II of the Act.

Having regard to the aforesaid well-settled test the question is whether clinical syringes could be regarded as "glass ware" falling within Entry 39 of the First Schedule to the Act ? It is true that the dictionary meaning of the expression "glass ware" is "articles made of glass" (See: Websters New World Dictionary). However, in commercial sense glass ware would never comprise articles like clinical syringes, thermometers, lactometers and the like which have specialised significance and utility. In popular or commercial parlance a general merchant dealing in "glass ware" does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc. which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee. It is equally unlikely that consumer would ask for such articles from a glass ware shop. In popular sense when one talks of glass ware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one's mind. Applying the aforesaid test, therefore, we are clearly of the view that the clinical syringes which the assessee manufactures and sells cannot be considered as "glass ware" falling within Entry 39 of the First Schedule of the Act.

In our opinion, the view taken by the Orissa High Court in *State of Orissa v. Janta Medical Stores* (supra) is correct and the view of the Allahabad High Court in *Commissioner of Sales Tax v. M/s S.S.R. Syringes and Thermometers* (supra) is unsustainable.

In this view of the matter it is clear that the assessee's turnover up to November 30, 1973 will fall under Entry 44 dealing with "hospital equipment" and the same would be taxable at the rate of 4% and its turnover from December 1, 1973 to March 31, 1974 will be taxable at the rate 7% as an unclassified item and the assessment will have to be made accordingly.

In the result the appeal is allowed but there will be no order as to costs.

S. R.

Appeal allowed.