

## **Baidyanath Ayurved Bhawan (P) ... vs Excise Commissioner, U.P. & Ors on 14 October, 1970**

**Equivalent citations: 1971 AIR 378, 1971 SCR (2) 590, AIR 1971 SUPREME COURT 378, 1971 U J (SC) 48, 1971 2 SCJ 267, ILR 1972 1 ALL 8**

**Author: K.S. Hegde**

**Bench: K.S. Hegde, J.C. Shah, A.N. Grover**

PETITIONER:

BAIDYANATH AYURVED BHAWAN (P) LTD.JHANSI

Vs.

RESPONDENT:

EXCISE COMMISSIONER, U.P. & ORS.

DATE OF JUDGMENT:

14/10/1970

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SHAH, J.C.

GROVER, A.N.

CITATION:

1971 AIR 378                      1971 SCR (2) 590

1971 SCC (1) 4

CITATOR INFO :

D              1989 SC2227 (36,37)

F              1990 SC 781 (26)

E              1990 SC1814 (24)

ACT:

Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955) s. 4 and Item 1 of Schedule-Medical preparations containing tinctures which contain alcohol-If dutiable.

HEADNOTE:

The appellant is a manufacturer of certain medicines with the aid of -substances like tincture, spirit, etc., which contain alcohol. On the question whether he was liable to pay duty under the Medicinal and Toilet Preparation (Excise

Duties) Act, 1955,

HELD : (1) The preparations are proprietary medicinal preparations and are not capable of being consumed as ordinary alcohol beverages, According to Item 1 of the Schedule to the Act, in order to attract duty, all that is required is that the medicinal preparation should contain alcohol. Alcohol may be a part of the preparation either because it is directly added to the solution or it came to be included in the medicinal preparation because one of its components contains alcohol. [592 E-G]

(2) It may be that a tincture is dutiable under the item, and, when the medicinal preparation in which it was used is also made dutiable it will involve multi-point taxation. But s. 4 of the Act shows that the multi-point tax on medicinal preparations containing alcohol was within the contemplation of the Legislature. That section provides for rebate of duty on alcohol supplied to the manufacturer of dutiable goods, and, every rebate presupposes imposition of tax or duty. [593 B-F]

(3) The rebate under s. 4 is confined only to those goods which directly come within the scope of s. 4 and not to others. From such a provision it cannot be said that as regard the other medicinal preparations, there can be no levy when the language of the provision imposing the levy is plain and unambiguous. [593 F-G]

M/s-. Pharm Products Ltd. Thanjavur v. District Revenue Officer A.I.R. 1969 Mad. 448, approved.

Cape Brandy Syndicate v. Commissioners of Inland Revenue. [1921] 1 K.B. 64, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1924 of 1970. Appeal by special leave from the judgment and order dated April 28, 1970 of the Allahabad High Court in Special Appeal 'No. 368 of 1970.

S. V. Gupte and Sobhagmal Jain, for the appellant.

o. P. Rana and R. Bana, for the respondents.

The Judgment of the Court was delivered by Hegde J.-In this appeal by special leave the true ambit of item 1 in the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (to be hereinafter referred to as the Act) read with S. 3(1) of that Act comes up for consideration.

The appellant is a manufacturer of certain medicines with the aid of substances like tincture, spirit etc. The tincture and spirit in their turn contain alcohol. The Superintendent of Excise called upon the appellant to pay duty under the Act on the medicinal preparation on the ground that they contain alcohol. The appellant resisted the demand on the ground that the medicines in question

were not prepared by adding pure alcohol; the fact that the tincture which is a component of that preparation contains alcohol does not make it a preparation containing alcohol. That contention was rejected by the Superintendent of Excise as well as by the High Court in the Writ petition brought by the appellant.

It is admitted that alcohol though it was not directly added is a component of the medicinal preparations in question. The alcohol has not undergone any chemical change into some other substance. It is present in a liquid form in those preparations. The question for decision is whether the preparation in question do not attract duty because alcohol was not directly added to the solution. The contention of the appellant is that unless alcohol is added into the preparation in its free condition, a medicinal preparation does not become dutiable. For deciding this question we may now read the relevant provisions of the Act.

Section 3(1) of the Act says "There shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India."

"Dutiable goods" is defined in s. 2(c) as meaning the medicinal and toilet preparations specified in the Schedule as being subject to the duties of excise levied under this Act: "Medicinal Preparation" is defined in S. 2(g) in these- words :

" "medicinal preparation" includes all drugs which are a remedy or prescription prepared for internal or external use of human beings, or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals."

5 9 2 Item 1 of the Schedule, the only item with which we are concerned in this case reads as follows :

Item No. Description of Dutiable goods Rate of Duty Medicinal preparation. Medicinal preparations, being patent or Ten proprietary medicines, containing alcohol Percent and which are not capable of being ab valouem consumed as ordinary alcoholic beverages.

The only other provision which we need consider is s. 4 of the Act. That section reads thus :

Where alcohol, opium, Indian hemp or other narcotic drug or narcotic had been supplied to a manufacturer of any suitable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty of excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty 'of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act."

It was conceded that the preparations with which we are concerned in this case are medicinal preparations. They are proprietary medicines and that they are not capable of being consumed as ordinary alcohol beverages. The only question that has to be decided is whether those preparations contain alcohol. It is admitted that tincture is a component of that preparation and alcohol is a component of tincture. Therefore we fail to see how it can be urged that those preparations do not contain alcohol. In order to attract duty all that is required is that a medicinal preparation should contain alcohol. Alcohol may be a part of the preparation either because it is directly added to the solution or it came to be included in that medicinal preparation because of one of the components of that preparation contained alcohol. According to the plain language of the provision all that is required is that the preparation should contain alcohol. In interpreting a taxing provision, the courts should not ordinarily concern themselves with the policy behind the provision or even with its impact. As observed by Rowlatt J. in *Cape Brandy Syndicate v. Commissioners of Inland Revenue*(1) in a taxing Act one has to look at (1) [1921] 1 K. B. 64.

what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. It was urged on behalf of the appellant that if we hold that even indirect introduction of alcohol into a medicinal preparation brings that preparation within the scope of s. 3(1) of the Act, it would mean multipoint taxation. Coming to the medicinal preparations with which we are concerned in this case, it was urged that if the view taken by the High Court is correct then, first the tincture used became dutiable and thereafter the medicinal preparations in which tincture was used became dutiable. It was said that that could not be the intention of the parliament. We are unable to appreciate this contention. Multipoint taxation is not unknown to us.

Our attention was invited to S. 4 of the Act in support of the Contention that the legislature did not intend to levy multi-point tax. Section 4 provides for rebate of duty on alcohol supplied to the manufacturer of dutiable goods for use as an ingredient of such goods by or under the authority of the collecting government and a duty of excise on goods so supplied had already been recovered by such Government under any law for the time being in force. In our opinion this provision instead of supporting the appellant goes to show that multi-point tax on medicinal preparations containing alcohol was within the contemplation of the legislature; otherwise there was no purpose in incorporating S. 4 into the Act. if section 3 did not impose any levy on medicinal preparations of which pure alcohol is not a component, there was no need for S. I. There can be no question of any rebate if there was no levy at all. Every rebate presupposes an imposition of tax or duty. But the rebate under s. 4 is confined only to those goods which directly come within the scope of s. 4 and not to others. That was the will of Parliament. If Parliament desired to give rebate only in certain cases and not to others, it cannot be said that as regards the other medicinal preparations there can be no levy. In our judgment the language of the provision imposing the levy is plain and unambiguous. It imposes duty on all medicinal preparations containing alcohol. At the hearing our attention was invited to the decision of the Madras High Court in *M/s. Pharm Products Ltd. Thanjavur & ors. v. Dist. Rev. Officer*(1). The conclusion reached by that High Court accords with our conclusion.

In the result this appeal fails and the same is dismissed with costs.

V.P.S.

Appeal

dismissed.

(1) A.I.R. 1969 Mad. 448.

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