

Customs, Excise and Gold Tribunal - Delhi

The Fairdeal Corporation (Pvt.) ... vs Collector Of Customs on 12 January, 1983

Equivalent citations: 1983 ECR 284 D Tri Delhi, 1983 (12) ELT 836 Tri Del

ORDER Gouri Shankar Murthy, Member (J)

1. In this proceeding before the Central Government, transferred to the Tribunal and heard as an Appeal pursuant to Section 131B of the Customs Act, 1962, the Appellant impugnes the levy of countervailing duty at 20% ad valorem in terms of Item I(iii) of the Schedule to the Medicinal and Toilet Preparations (Excise Duty) Act, 1955 (hereinafter referred to as the Act) on an imported consignment of Pethidine Hydrochloride.

2. The grounds urged in support of the Appeal, inter alia, are as follows ;

(a) The consignment was imported and not manufactured in India as envisaged in Section 3 of the Act and there could be no levy of any duty on the imported consignment in question under the Act ;

(b) In any event, the consignment in question was not "dutiable goods" as denned in Section 2(c) of the Act, since it did not conform to the description in Item I(iii) of the Schedule to the Act. ["medicinal preparation" not containing alcohol but containing narcotic drug or narcotic],

3. We have heard Shri M.V. Rajadhyaksha, Advocate for the Appellant and Mrs. Zutshi for the Respondent at length.

4. The first of the aforesaid grounds would appear to be clearly misconceived. The levy was, in fact, an additional duty (generally known as countervailing duty) in terms of Section 3 of the Customs Tariff Act, 1975 read with the provisions of the Medicinal and Toilet Preparations Act and not one under the latter enactment simpliciter.

5. In terms of Section 3 of the Customs Tariff Act, an imported article becomes exigible to an additional duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. The explanation to the aforesaid provision clarifies that if a like article is not so produced or manufactured, the additional duty shall be equal to the excise duty leviable on the class or description of articles to which the imported article belongs.

6. If, therefore, the imported consignment in question is a medicinal preparation containing narcotic drug or narcotic in terms of the description contained in Item I(iii) of the Schedule to the Act, the levy of "additional duty" at the rate specified in the aforesaid item is attracted pursuant to Section 3 of the Customs Tariff Act, regardless of the fact that it was actually imported and no like article is manufactured in India.

7. The crux of the issue is, thus, if Pethidine Hydrochloride is a "medicinal preparation containing narcotic drug or narcotic" and this brings us to ground No. (2) set out in para 2(b) supra.

8. In a brief compass, the argument for the petitioner was :

(a) in terms of Section 2(g) of the Act, "medicinal preparations" 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 ;

(b) the consignment in question was not a remedy or a prescription prepared for internal or external use of human beings or animals in as much as it cannot be used straightaway without further processing into injections or tablets, etc. ;

(c) nor is it a "substance" in the light of the ratio of the decision of the Supreme Court in A.I.R. 1963 S.C. 665 [(1963)2 SCJ 322 - Chimanlal Jagjivandas Sheth v. State of Maharashtra] wherein construing the definition of "Drug" in Section 3(b) of the Drugs Act, 1940 which is in pari-materia with the definition of "medicinal preparations" in the Act, their Lordships had drawn a distinction between "Medicine" and "substances" which are not medicines strictly so-called and held the appropriate meaning of the expression "substances" to be "things" which are other than medicines but are used for or in treatment ;

(d) if, therefore, the imported consignment is neither a "drug"--not being a remedy or prescription--nor a substance, it cannot be a "medicinal preparation" exigible to duty under the Act;

(e) in any view, applying the rule of strict construction of taxing provisions (A.L.R. 1971 S.C.378-Baidyanath Ayurveda Bhavan v. Excise Commissioner, U.P.), even if the consignment was a "medicinal preparation", unless it contains narcotic drug or narcotic in terms of Item I(iii) of the Schedule to the Act, it cannot attract duty. While a "medicinal preparation" containing narcotic like pethidine will attract duty, pethidine hydrochloride (the imported consignment) will not be liable to duty, inasmuch as it is the narcotic itself and cannot be, therefore, a "medicinal preparation" containing a .narcotic.

9. Counsel for the respondent, on the other hand, contended that the definition of "medicinal preparations" in Section 2(g) of the Act is inclusive of both drugs and substances and "substance" is much wider in its scope and amplitude and include "drugs". She invited our attention to the meanings given to "substance" and "drugs" in the Dictionary of Science & Technology W&R Chambers, 1971 and contended that the consignment in question was a substance falling within the definition of "medicinal preparations" in Section 2(g) of the Act and within Item I(iii) of the Schedule to the Act since it was a narcotic itself.

10. A "narcotic drug" or "narcotic" had been defined to mean a substance, other than alcohol, which, when swallowed or inhaled by or injected into, a human being, induces drowsiness, sleep, stupefaction or insensibility in the human being and includes alkaloids of opium. [Section 2(h) of the Act]. Pethidine Hydrochloride, the imported consignment in question is, indisputably, a "narcotic", used as an analgesic in the form of injections or tablets.

11. A "medicinal preparation", however, had been defined to include-

(i) all drugs which are a remedy or prescription prepared for internal or external use of human being or animals ; and

(ii) all substances intended to be used for in the treatment, mitigation or prevention of disease in human beings or animals.

[Section 2(g) of the Act]

12. It would follow from an analysis of the aforesaid definitions that a "narcotic drug" or "narcotic" is a "medicinal preparation"-

(a) if a "drug", when put to the internal or external use of human beings or animals-

(i) by itself, as a remedy ; or

(ii) in conjunction with other drugs or substances as in a prepared prescription ; or

(b) as a substance if intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals.

13. In any view, a "narcotic" being a substance, even as per the definition, will qualify to be a "medicinal preparation", if it is intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals. That the imported consignment was intended to be so used is not in controversy. It was, consequently, a "medicinal preparation" within the scope of the meaning given to the said expression in Section 2(g) of the Act, even if it is not actually a "drug" being a readymade remedy or prescription.

14. In the Supreme Court case cited [Chimanlal Jagjivandas Sheth v. State of Maharashtra- A.I.R. 1963 S.C. 665], it was "drug" that was defined to include-

(a) medicines for internal or external use of human beings or animals ;

(b) all substances intended to be used for or in treatment, mitigation or prevention of disease in human beings or animals other than medicines ; and

(c) such substances (other than food) intended to affect the structure or any function of the human body, etc,

15. It is fairly obvious that while the contradistinction in the Supreme Court case was between medicines for internal or external use and substances other than medicines, no such contradistinction would appear to arise between "drugs" and "substances" simpliciter in terms of Section 2(g) of the Act, in view of the absence of words specifically excluding "drugs" from "substances". Assuming, however, that "drugs" and "substances" in Section 2(g) of the Act have to be mutually exclusive, the definition of "narcotic" in Section 2(h) makes it abundantly clear that a

"narcotic" is a "substance", if not a "drug". Reliance on the decision of the Supreme Court in A.I.R. 1963 S.C. 665 cannot, thus, be of any avail to the Appellant.

16. Even so, this question remains if the consignment in question was a "medicinal preparation" containing narcotic.

17. While it is true that taxing provisions are to be strictly construed (A.I.R 1971 S.C. 378) it does not appear that there is any warrant to construe item I(iii) of the Schedule in the manner sought for. Once it is held that the imported consignment was a "medicinal preparation", the fact that it was the narcotic itself and not a preparation containing narcotic would hardly appear to matter. Where a "narcotic drug" or "narcotic" by itself qualifies to be a "medicinal preparation" in terms of Section 2(g) of the Act, it is difficult to exclude it from the ambit of Item I(iii) of the Schedule while including a "medicinal preparation" containing a narcotic, howsoever small in content.

18. The ordinary dictionary meaning of the word "contain" is "comprise" apart from "include" [Chamber's Twentieth Century Dictionary]. A "medicinal preparation" containing narcotic drug or narcotic can thus be one comprising, may be wholly, of a narcotic drug or narcotic. Thus understood, the absurdity that may arise if Item I(iii) of the Schedule can be applicable to a medicinal preparation with a trace of narcotic however small, and not to another comprising wholly of the narcotic itself, is avoided.

19. In the result, the appeal cannot sustain and is hereby dismissed.