Supreme Court of India
Mohanlal Maganlal Bhavsar ... vs Union Of India (Uoi) And Ors. on 20 November, 1985
Equivalent citations: AIR 1986 SC 401, 1986 (8) ECC 50, 1986 (23) ELT 3 SC, (1986) 1 SCC 122, 1986 (1) UJ 23 SC
Author: D Madon
Bench: D Madon, G Oza
JUDGMENT D.P. Madon, J.

1. This is an Appeal by certificate granted by the High Court of Gujarat under Sub-clause (b) of Clause (1) of Article 133 of the Constitution of India, prior to the amendment of that clause by the Constitution (Thirtieth Amendment) Act, 1972, against the judgment and order dated June 26, 1970, of that High Court in a writ petition under Article 226 of the Constitution filed by the original First Appellant and his two brothers, Appellants Nos. 2 and 3.

2. The said Appellants were partners carrying on the business of manufacturing medicinal preparations under the firm name and style of Bhavsar Chemical Works at Vyara in the District of Surat in the State of Gujarat. The contention of the Appellants was that the ointments and liniments manufactured by them were not liable to excise duty under item 1 of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Act No. 16 of 1955). The Schedule to the said Act was substituted by Act 19 of 1961 and was again substituted by a new Schedule by Act No. 5 of 1964. It is with item 1 in the Schedule to the said Act as substituted by Act 19 of 1961 that we are concerned. Item 1 in the said Schedule as so substituted provided as follows :

Item No.	Description of Dutiable Goods	Rate of Duty
1	2	3
1.	Medicinal preparations being patent or pro-	Ten percent
	prietary medicines containing alcohol and	advalorem
	which are not capable of being consumed as ordinary alcoholic beverages.	

There is no dispute that the ointments and liniments manufactured by the said firm were medicinal preparations being patent or proprietary medicines and contained alcohol. What was, however, contended was that for such medicinal preparations to fall under item 1 they must contain alcohol in "a free and full state", that is to say, that alcohol must exist in such medicinal preparations in liquid form and that as the medicinal preparations in question were in semi solid form they could not fall under item 1.

3. We are unable to accept this contention which was also negatived by the High Court. Before a medicinal preparation can fall under item 1 three conditions are required to be satisfied :

1. the preparation must be a patent or proprietary medicine;

2. it must contain alcohol; and

3. it must not be capable of being consumed as an ordinary alcoholic beverage.

There is no reference in item 1 to the form of medicinal preparation and the item does not require that any such preparation must be in liquid form. The determinative factor is whether the medicinal preparation is capable of being consumed as ordinary alcoholic beverage or not and not whether it is in semi-solid or liquid form. Obviously, a semi-solid preparation cannot be consumed as ordinary alcoholic beverage, though it may be possible that if it is dissolved, it may be so consumed, as to which we, however, express no opinion. Even a medicinal preparation in liquid form, though it contains alcohol, may not be capable of being consumed as ordinary alcoholic beverage for a variety of reasons, for instance, because its alcohol contents are so negligible that it would not constitute an alcoholic beverage. The use of the word "beverages" in item 1 does not mean that medicinal preparations referred to in that item have to be in the form of a beverage. The fact that the medicinal preparations of the said firm were in semi-solid form was, therefore, a wholly irrelevant factor in determining whether the said preparations fell under item 1 or not. These preparations were patent or proprietary medicines which contained alcohol and it was undisputed that such preparations were net capable of being consumed as ordinary alcoholic beverages. The High Court was, therefore, right in holding that these medicinal preparations were dutiable under item 1.

4. The next contention of the Appellants, which was also negatived by the High Court, was that in determining the value of the medicinal preparations for the purpose of levying excise duty thereon the authorities erred in taking the wholesale price of the said preparations and not the price at which these preparations were supplied by the said firm to their chief distributor Messrs M.B. Bhavsar & Sons. In order to test the correctness of this contention it is necessary to set out a few facts which are material to this aspect of the case. The firm of Messrs M.B. Bhavsar & Sons, though a separate partnership firm, was in fact a firm in which not only the original First Appellant and Appellants Nos. 2 and 3 were partners but a son of each of them was also a partner. There was thus identity of interest between the firm of Messrs M.B. Bhavsar & Sons and the firm M/s. Bhavsar Chemical Works. Both these firms had their offices in the same premises and under the partnership agreement the sons of the original First Appellant and the other two Appellants were to share only in the profits of Messrs M.B. Bhavsar & Sons but not to be liable for any losses. These two firms therefore cannot be said to be at arm's length or independent parties and the prices at which the medicinal preparations were supplied by Bhavsar Chemical Works to Messrs M.B. Bhavsar & Sons cannot be taken to be the real value of the said preparations. The High Court was, therefore, right in rejecting this contention also.

5. In the result this Appeal fails and is dismissed with costs which are quantified at Rs. 2,000. The Respondents will be entitled to withdraw the amount deposited by the Appellants as security for costs and to appropriate the same towards the costs of this Appeal.