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STATE OF GUJARAT
v.
SUHRID GEIGY LTD. AND ORS.

DECEMBER 10, 1996

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[S.P. BHARUCHA AND S.C. SEN, JJ.]

Medicinal and Toilet Preparations (Excise Duties) Act 1995 :

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Sec. 2(g), 2(h) and Item (iii) sub-entry (1) of Entry 1 of the Schedule—Assessee—Manufacturer of Medicinal preparations—Xylocaine, a local anaesthetic, and other anti-inflammatory and anti-rheumatic medicinal preparations containing Xylocaine—Notice to pay excise duty—On challenge, High Court quashed the demand to pay excise duty—On appeal, Held: the substance in the Xylocaine that produces drowsiness or sleep or stupefaction or insensibility not identified—Not liable to pay excise duty—High Court

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justified in quashing the demand to pay excise duty.

The Respondent-assesseees were engaged in the manufacture of Xylocaine, a local anaesthetic, and other anti-inflammatory and anti-rheumatic medicinal preparations containing a small percentage of Xylocaine. Demand notices under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 were issued to the assesseees to pay excise duty upon the said medicinal preparations. On challenge, the High Court quashed the demand to pay Excise Duty. Hence the present appeals.

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The contention of the Revenue was that the said medicinal preparations contain Xylocaine, which has the property of producing drowsiness, sleep, stupefaction and insensibility, and, therefore, the said medicinal preparations were dutiable.

Dismissing the appeals, this Court

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HELD : 1.1. The High Court was justified in quashing the demands upon the assesseees to pay excise duty on the said medicinal preparations.

[801-D]

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1.2. Under item(iii) of sub entry (i) of Entry 1 of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, to be dutiable thereunder a medicinal preparations should contain a narcotic drug or a

narcotic. In other words , the medicinal preparation must contain a substance that, when swallowed or inhaled by or injected into a human being, produces in him either drowsiness or sleep or stupefaction or insensibility. [800-F]

1.3. To render a medicinal preparation dutiable, it must include some substance, other than a medicinal preparation, that possesses the properties of producing drowsiness, sleep, stupefaction or insensibility. That substance needs to be identified. If that substance is in a medicinal preparation, whether by itself or by reason of being an ingredient of another medicinal preparation that is incorporated in the medicinal preparation, the medicinal preparation is dutiable. [801-B]

1.4. Xylocaine is itself a medicinal preparation, as defined by Section 2(g). It cannot, therefore, be said to be a "substance" within the meaning of Section 2(h), by reason of whose inclusion in another medicinal preparation, the other medicinal preparation becomes dutiable. [801-A]

1.5. It is not enough for the Revenue to state that the medicinal preparations manufactured by the assessee contain Xylocaine and Xylocaine has the properties mentioned in section 2(h). It must set out what is it that is contained in Xylocaine which contains the properties of producing drowsiness, sleep, stupefaction or insensibility and, by reason thereof, makes the said medicinal preparations dutiable. [801-C]

2. In the connected appeals, other anaesthetics are ingredients of the medicinal preparations sought to be made dutiable. As in the case of Xylocaine, what it is within the anaesthetics that produces drowsiness or sleep or stupefaction or insensibility was not identified by the Revenue. Hence, these medicinal preparations also could not be subjected to duty. [801-F]

3. The High Court, however, erred in holding that by reason of the definition in Sec. 2(h), a narcotic drug or a narcotic is a substance which must produce drowsiness and sleep and stupefaction and insensibility, in that order, in a human being, and that the word "or" between "stupefaction" and "insensibility" therein must be read as "and". On its plain meaning, a narcotic drug or narcotic as defined in section 2(h) is a substance, other than alcohol, which, when swallowed or inhaled by, or injected into a human being, produces in him either drowsiness or sleep or stupefaction or insensibility. A substance that has the effect of inducing drowsiness but not going

A on to induce sleep, stupefaction and insensibility is also a narcotic drug or narcotic under section 2(h). [800-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1780 of 1980 Etc.

B From the Judgment and Order dated 4/7.4.80 of the Gujarat High Court in S.C.A. No. 912 of 1975.

R.F. Nariman, Y.P. Adhyaru, Ms. Hemantika Wahi, Ms. H. Mukherjee, P.H. Parekh, Ms. Indoo Verma, Mukul Mudgal, B.H. Chhatrapati and Gopal Jain for the appearing parties.

C V.K. Verma (N.P.) for Union of India.

The Judgment of the Court was delivered by

D **BHARUCHA, J.** These appeals arise out of judgments and orders of the High Court of Gujarat. The principal judgment was delivered in the case of *Suhrid Geigy Ltd., Ahmedabad v. Union of India & Ors.* (1980) E.L.T. 538, which is under challenge in Civil Appeal No. 1780/80, and was followed in the other matters. We shall deal with the principal judgment first.

E The appellants manufacture, *inter alia*, the following medicinal preparations :

Sr. No.	Product	
F 1.	Xylocaine	1% Plain vial
2.	"	2% Plain vial
3.	"	1% Adrenaline vial
4.	"	2% Adrenaline vial
G 5.	"	2% Adrenaline Cartridge
6.	"	5% heavy amououle
7.	"	4% topical vial
8.	"	5% ointment tube
H 9.	"	2% Jelly tube

10.	"	2% viscous vial
11.	Butazolidin	3 ml. amoooule
12.	Irgapyrin	3 ml. amoooule
13.	Irgapyrin	5 ml. amoooule

The first ten medicinal preparations are local anaesthetics. The other three are anti-inflammatory and anti-rheumatic medicinal preparations and contain a small percentage of Xylocaine. The appellants were issued with demand notices to pay excise duty under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, upon the said medicinal preparations. The demands were challenged in a writ petition before the Gujarat High Court, which was allowed by the principal judgment under appeal.

Reference must first be made to some provisions of the said Act. Section 2 is its definition section. Clause (c) thereof defines "dutiabie goods" to mean "the medicinal and toilet preparations specified in the Schedule". Clause (c) defines "medicinal preparation" to include "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". The definition of "narcotic drug" and "narcotic" in clause (h) reads thus :

"(h) "narcotic drug" or narcotic" means 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 all alkaloids of opium."

Section 3(1) is the charging section and it states that there shall be levied duties of excise, at the rates specified in the Schedule. On all dutiable goods manufactured in India. Entry 1 of the Schedule deals with medicinal preparations and sub-entry (1) thereof with allopathic medicinal preparations. Item (iii) thereunder at the relevant time prescribed the duty leviable on "medicinal preparations not containing alcohol but containing narcotic drug or narcotic".

The aforementioned notices were issued to the appellants upon the basis that anaesthetics, including Xylocaine, were covered by the definition

A of a narcotic drug or narcotic in section 2(h); hence, medicinal preparations containing Xylocaine were assessable to duty under the said Act.

B The High Court took the view that the use in Section 2(h) of the word "or" between the words "stupefaction" and "insensibility" did not suggest alternatives. The four stages of drowsiness, sleep, stupefaction and insensibility mentioned in Section 2(h) were stages of progression which followed one after another and, in that sense, the word "or" meant "and".
 C A narcotic drug or a narcotic should, therefore, produce all the four effects one after the other with the passage of time. When a narcotic drug or a narcotic, which was a component part of the medicinal preparation sought to be taxed, ceased to produce the symptoms set down in the definition of Section 2(h), it ceased to be a narcotic drug or a narcotic. For this, among other reasons, the High Court rejected the Revenue's case.

D We do not agree with the High Court that, by reason of the definition in Section 2(h), a narcotic drug or a narcotic is a substance which must produce drowsiness and sleep and stupefaction and insensibility, in that order, in a human being, and that the word "or" between "stupefaction" and "insensibility" therein must be read as "and". We take the view that, on its plain meaning, a narcotic drug or narcotic as defined in Section 2(h) is a substance, other than alcohol, which when swallowed or inhaled by, or
 E injected into a human being produces in him either drowsiness or sleep or stupefaction or insensibility. Put differently, a substance that has the effect of inducing drowsiness but not going on to induce sleep, stupefaction and insensibility is also a narcotic drug or narcotic under Section 2(h).

F By reason of item (iii) of sub-entry (1) of Entry 1 of the Schedule to the said Act, to be dutiable thereunder a medicinal preparation should contain a narcotic drug or a narcotic. In other words, the medicinal preparation must contain a substance that, when swallowed or inhaled by or injected into human being, produces in him either drowsiness or sleep or stupefaction or insensibility.

G The Revenue's case is that the said medicinal preparations contain Xylocaine, which is an anaesthetic; Xylocaine has the property of producing drowsiness, sleep, stupefaction and insensibility; therefore, the said medicinal preparations are dutiable. The said medicinal preparations are Xylocaine of varying strengths; admixtures of Xylocaine and adrenaline of
 H varying strength; and Butazolidin and Irgapyrin, which contain Xylocaine.

Xylocaine is manufactured by the appellants. Xylocaine is itself a medicinal preparation, as defined by Section 2(g). It cannot, therefore, be said to be a "substance" within the meaning of Section 2(h), by reason of whose inclusion in another medicinal preparation, the other medicinal preparation becomes dutiable. As we see it, to render a medicinal preparation dutiable, it must include some substance, other than a medicinal preparation, that possesses the properties of producing drowsiness, sleep, stupefaction or insensibility. That substance needs to be identified. If that substance is in a medicinal preparation, whether by itself or by reason of being an ingredient of another medicinal preparation that is incorporated in the medicinal preparation, the medicinal preparation is dutiable. In the present case, it is not enough for the Revenue to state that the said medicinal preparations contain Xylocaine and Xylocaine has the properties mentioned in Section 2(h). What must be set out is: what is it that is contained in Xylocaine which contains these properties and, by reason thereof, makes the said medicinal preparations dutiable.

It is, therefore, that we would agree with the High Court that the demands upon the appellants must be quashed.

Having regard to this conclusion, we do not find it necessary to consider either the argument that the State of Gujarat, by itself, cannot maintain the appeal or that the demands upon the appellants contravene the provisions of Article 14 of the Constitution.

In the other appeals, anaesthetics are ingredients of the medicinal preparations sought to be made dutiable. As in the case of Xylocaine, what it is within the anaesthetics that produces drowsiness or sleep or stupefaction or insensibility was not identified. For the reasons afore-stated, these appeals must also be dismissed.

The appeals are dismissed. No order as to costs.

S.V.K.I.

Appeals dismissed.