

A MUNICIPAL CORPORATION FOR THE CITY OF
THANE AND ORS.

v.

ASMACO PLASTIC INDUSTRIES AND ORS.

B JULY 17, 1998

[S.C. AGRAWAL, G.B. PATTANAİK
AND S. RAJENDRA BABU, JJ.]

C *Municipalities :*

Maharashtra Municipality (Octroi Duty) Rules, 1968 :

*Schedule I—Entry 53(c) or 40(b)—PVC Resin in powder form—
Classification of—Held: Classifiable under Entry 53(c) "plastic and plastic
goods, plastic powder etc." and not under Entry 40(b) "Chemicals of all
D sorts"—Bombay Provisional Municipal Corporation Act, 1949. Bombay
Municipal Corporation (Levy of) Octroi Rules, 1965;*

*Schedule H—Entry 32(c)—PVC Resin in Powder form and Synthetic
Hydrocarbon Resin—Classification of—Held : Classifiable under Entry 32(c)
E "plastic and plastic goods, plastic powder"—Bombay Municipal Corporation
Act, 1888.*

Interpretation of Statutes :

*Taxing Statutes—Commodities brought to taxation—Held : Meaning
F attributed to commodities will be with reference to their commercial parlance
and not with reference to technical literature.*

*Internal aids—Heading—Classification of goods—In different headings
in 1965 and 1968 Octroi Rules—Held : Goods are classified in the Rules not
on any scientific basis unlike in Chapter 39 of the Customs Tariff Act—Hence,
G Heading itself does not control the meaning attached to goods—Customs
Tariff Act, 1975, Chapter 39.*

Words and Phrases :

*"Plastic powder"—Meaning of—In the context of Entry 53(c) of Schedule
H 1 to Maharashtra Municipality (Octroi Duty) Rules, 1968.*

“Plastic powder”—Meaning of—In the context of Energy 32(c) Schedule H to Bombay Municipal Corporation (Levy of) Octroi Rules, 1965. A

The respondent manufactured PVC Resins in powder form and Synthetic Hydrocarbon Resin, which were liable for octroi duty. The respondent filed a writ petition before the High Court contending that the aforesaid products fell under Entry 40(b) “Chemicals of all sorts” of Schedule I to the Maharashtra (Octroi Duty) Rules, 1968 whereas the appellant contended that the said products fell under Entry 53(c) of the 1968 Rules and Entry 32(c) of Schedule H to the Bombay Municipal Corporation (Levy of) Octroi Rules, 1965 relating to “plastic and plastic goods, plastic powder etc.” respectively. The High Court allowed the petition. Hence this appeal. B C

The following questions arose before this Court :-

- (a) Whether for the purpose of levy of Octroi duty PVC Resins in powder form would fall under ‘plastic and plastic goods, plastic powder’ in Entry 53(c) of Schedule I to Maharashtra Municipality (Octroi Duty) Rules, 1968 framed under the Bombay Provincial Municipal Corporation Act, 1949 or under Entry 32(c) of Schedule H to the Municipal Corporation (Levy of) Octroi Rules, 1965 framed under the Bombay Municipal Corporation Act, 1888. D
- (b) Whether for the purpose of levy of Octroi duty Synthetic Hydrocarbon resin is to be treated as ‘plastic and plastic goods, plastic powder’ in Entry 32(c) of Schedule H to the Municipal Corporation (Levy of) Octroi Rules, 1965 framed under the Bombay Municipal Corporation Act, 1888. E

Allowing the appeal, this Court F

HELD : 1.1. In the present case, when the expression “plastic, plastic goods and plastic powder” is used along with bakelite and bakelite goods and the manner in which the Legislature used these expressions will clearly indicate that the intention is to cover all kinds of plastic material whether in primary form or in any other secondary form. [779-F] G

1.2. Therefore, the appropriate manner in which the commodity in the present case, namely, plastic powder, has been treated as a separate entry, it is brought to tax under Entry 32(c) or 53(c) to Schedule H under the Bombay Municipal Corporation (Levy of) Octroi Rules, 1968. Similar would H

A be the position with reference to Hydrocarbon resins. Even Hydrocarbon resin is treated on the same footing as a synthetic plastic and, therefore, the goods in question cannot be treated as plastic goods or plastic powder but as separate goods and, therefore, one cannot accept the contention of the respondent that the said goods are neither plastic in nature nor powder in form and it is not possible to accept the contention that Hydrocarbon resin is distinct from plastic. [780-H; 781-A]

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C 2.1. It would not be appropriate to rely upon technical literature to interpret the Entry in question in one manner or the other because in tax enactment when particular commodities are brought to taxation the meaning attributed to the commodities will be with reference to their commercial parlance, that is, if those who deal with the goods understand the said goods in one manner or the other. [779-G-H]

D 2.2. Under each heading of the Rules several goods are mentioned but no scientific basis in bringing these goods under one heading or the other can be discerned unlike in Chapter 39 of the Customs Tariff Act, 1975 where the goods are more scientifically categorised. Hence, heading as such in any one group does not by itself control the meaning to be attached to each of such goods. [778-H; 779-C]

E *Chemicals and Fibres India Ltd. v. Union of India*, (1982) ELT 917 Bom., referred to

Brussels Tariff Nomenclature (January [1978] Edn.), referred to.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3491 of 1992 Etc.

From the Judgment and Order dated 26.3.92 of the Bombay High Court in W.P. No. 940 of 1984.

G V.A. Bobde and D.N. Mishra for M/s. JBD & Co., B.N. Singhvi and Anil Kumar Gupta for the Appellants.

R.F. Nariman, Vivek Gambhir, D.P. Chaturvedi, Ms. Charu Bhargava, U.A. Rana, Sudhanshu Tripathi, Ms. Manju Mishra and K.J. John for the Respondents.

H The Judgment of the Court was delivered by

RAJENDRA BABU, J. In these appeals, the questions that arise for consideration are as follows:-

(1) Whether for the purpose of levy of Octroi duty P.V.C. Resins in Powder form would fall under 'plastic and plastic goods, plastic powder' in Item 53(c) of Schedule I to Maharashtra Municipality (Octroi duty) Rules, 1968 framed under the Bombay Provincial Municipal Corporation Act, 1949 or under Item 32(c) of Schedule H to the Municipal Corporation (Levy of) Octroi Rules, 1965 framed under the Bombay Municipal Corporation Act, 1888. **B**

(ii) Whether for the purpose of levy of Octroi duty Synthetic Hydrocarbon resin is to be treated as 'plastic and plastic goods, plastic powder' in Item 32(c) of Schedule H to the Municipal Corporation (Levy of) Octroi Rules 1965 framed under the Bombay Municipal Corporation Act, 1888. **C**

Civil Appeals Nos. 3491-93 of 1992 relate to Octroi duty levied by the Municipal Corporation of Thane which is governed by the Bombay Provincial Municipal Corporation Act, 1949. Octroi duty is levied by the said Corporation under the Maharashtra Municipality (Octroi duty) Rules, 1968 and the relevant entries which were considered by the High Court were Entry 40, (b) relating to "chemicals of all sorts" and Entry 53(c) relating to "plastic and plastic goods, plastic powder, etc." In the impugned judgment the Division Bench of the High Court has held that P.V.C. Resins Powder form does not fall under "plastic" in Entry 53(c) but falls under "chemicals" in Entry 40(b). **D**

Civil Appeals Nos. 7087-88 of 1993 relate to Municipal Corporation of Greater Bombay which is governed by Bombay Municipal Corporation Act, 1888 and the Municipal Corporation (levy of) Octroi Rules 1965. In that case, relevant Entry is Entry 32(c) which, with slight difference, is similar to Entry 53(c) and in the said entry also the words "plastic and plastic goods, plastic powder" have been used. **E**

The respondents filed writ petitions to contend that the said goods are only ingredients used in the manufacture of plastic goods and, therefore, are neither plastic in nature nor powder in form; that it is not a resin and all resin must be regarded as polymers and not plastics; that unless other ingredients like stabilizer and lubricants are used; that there cannot be solidity in its finished state and shaping by flow at some stages of its manufacture; that the said product is neither a perfume nor a toilet requisite, a colour or a **F**

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A household good and does not answer the description of goods listed under the particular class and, therefore, they contended that they do not constitute plastic. They also set out before the High Court in challenging the action of the respondent certain technical details as to the nature of the commodity in question and contended that the levy of Octroi duty on the said product under Item No. 32(c) of schedule H or Entry 53(c) of Schedule I under relevant Rules is not appropriate. The substance of the contentions put forth on behalf of the respondents is that plastic is a material that contains a high polymer usually synthetic, combined with other ingredients such as curatives, fillers, reinforcing agents, colorants, plasticisers etc. While synthetic resin of which the said product is but one type is a polymer synthesized, in this particular case, for adhesive use. Secondly it was stated that synthetic resin is a polymer itself while plastic is polymer plus the additives mentioned as aforesaid. Therefore, they contended that the product in the form of pellets and not in the form of powder could be covered by Item No. 32(c) of the Schedule to the said Act. They further pointed out that hydrocarbon resin is distinct from plastic. Entry 40(b) relates to chemical of all sorts, while Entry 53(c) relates to plastic and plastic goods, plastic powder, etc. The Bombay High Court held that the P.V.C. resin in powder form does not fall under plastic and plastic goods under Entry 53(c) or Entry 32(c) of the relevant rules and falls under head chemical under Entry 40(b) Schedule of relevant Rules. Hence these appeals.

E The Octroi Schedule framed in accordance with the Maharashtra Municipality (Octroi duty) Rules, 1968, Class II refers to articles set out in the schedule giving the serial number, description of the goods and their rate at which the octroi is levied. The goods are classified under Class II as Articles used for food and drink for men and animals and drugs and under serial No. F 14 all chemicals, chemical insecticides, surgical goods of all kinds are included. Class III refers to articles used for fuel lighting, washing and industrial use and under Item 40 (b) chemicals of all sorts are included.

G We may firstly refer to the Scheme of bringing several commodities to tax the several goods under the Octroi Schedules. In either rules several classes of goods are mentioned in various headings like articles of good, animals, articles used for fuel, lighting, washing and industrial use, articles used in the construction of building, roads, and other structures and articles made of wood or cane, perfumes, toilet requisites, colours and household goods, tobacco requisites and so on. Under each heading several goods are H mentioned but we cannot discern any scientific basis in bringing these goods

under one heading or the other. For example in class III Articles used for fuel, lighting, washing and industrial use, it is not clear whether charcoal which is at Item No. 14 when brought into a local area which is to be used to industrial use could be subjected to octroi duty. Similarly, when soap of all kinds is used in Item No. 17, boot and metal polish are lugged in. While detailing the rates of duty what is stated is 2 per cent ad valorem for washing soap and bath soap costing not more than Rs. 1.25 per cake. It obviously would indicate that these goods need not necessarily be used for industrial purpose or as fuel for lighting or washing. While soap is used as a washing material, boot and metal polish cannot be stated to be a washing material. Again various detergents used in washing clothes, floor and utensils are referred to Item No. 18. It is not clear whether it is related only to such goods which are meant for the purpose of industrial use. Viewed from this angle, we do not think the classification of goods made in these entries are on any scientific basis and heading as such in any one group does not by itself control the meaning to be attached to each of such goods.

In Entry 32 (c) of the Rules framed under Corporation Act or under Entry 53 (c) of the Octroi Schedule framed under Municipalities Act, we are concerned with the expression "plastic, plastic goods and plastic powder". We may contradistinguish this Entry with a relatable Entry in the Customs Tariff Act where the goods are more scientifically categorised. Under Chapter 39 of the Customs Tariff Act, expression "plastic and articles thereof" is used to bring within that heading the "Primary Forms, polymers of ethylene, polymers of propylene or of other olefins, polymers of styrene, vinylacetate or other vinyl esters". Polymers of vinyl chloride or of other halogenated olefins in primary forms and vinyl chloride polymers are also brought in under this heading. In the present enactment when the expression "plastic, plastic goods and plastic powder" is used along with bakelite and bakelite goods and the manner in which the Legislature uses these expressions will clearly indicate that the intention is to cover all kinds of plastic material whether in primary form or in any other secondary form.

Learned counsel on either side relied on technical literature on the matter to impress upon us the strength of their respective cases. We do not think it would be appropriate to rely upon such data to interpret the Entry in question in one manner or the other because in tax enactments when particular commodities are brought to taxation the meaning attributed to the commodities will be with reference to their commercial parlance, that is, if those who deal with the goods understand the said goods in one manner or

A the other. The technical material though of course may be useful on certain aspects, the same will not be decisive of the matter.

B It is necessary to advert to a few decisions relied upon by the learned
C counsel. In *chemicals and Fibres India Ltd. v. Union of India and Others*,
D (1982) E.L.T. 917 (Bom), a distinction was sought to be drawn about between
resins, polymers, polymer plus additives and plastics. The question that fell
for consideration in that case was whether polyester chips of textile grade was
assessable to excise duty under Item No. 15A of Schedule I of Central Excise
and Salt Act, 1944. The goods were classified in a different manner and
polymer terene was specifically added therein. In the manufacture polythene
films, lay-flat tubings and P.V.C. sheets and Polyvinyl Chloride sheets were
specifically mentioned. In that context the Court had to examine the various
meanings given to the expression thereunder and adopted the nomenclature
of the January 1978 Edition of Brussels Tariff Nomenclature. It was not
disputed in that case that the polymer chips fibre grade is a saturated linear
polyester. Considering the nature of the product on the material placed before
the Court, it was held that it fell within clause (1) of Item No. 51 A of the First
Schedule to the Excise Act. On that basis the resins polymers and polymer
additives were separately considered.

E In *Industrial Plastic Corporation Private Limited and Others v. Union*
F *of India and another*, (1983) E.L.T. 425 (Bom.), distinction between plastic and
resin was noted. The expression "plastic" was held to be broader than the
expression "resin" but it was also noticed that both these terms are used
indiscriminately. Though etymologically and scientifically, the products such
as clay, glass or rubber could be considered to be plastic, they were never
regarded as such. Again the entry that fell for consideration was item No. 51
A of the First Schedule to the Central Excise and Salt Act. It was on that basis
the Court held that the various items such as wood floor, phenolic moulding
powder could fall in the various goods items mentioned in Item No. 51A of
the First Schedule to the Central Excise and Salt Act.

G We think that the appropriate manner in which the commodity in the
present case, namely, plastic powder, has been treated as a separate entry it
is brought to tax under Item No. 32(c) or 53(c) to Schedule H under the
Relevant Rules. Similar would be the position with reference to Hydrocarbon
H resins. Even Hydrocarbon resin is treated on the same footing as a synthetic

plastic and, therefore, the goods in question cannot be treated as plastic goods or plastic powder but as separate goods and therefore, we cannot accept the contention put forth on behalf of the respondents that the said goods are neither plastic in nature nor powder in form and we do not accept the contention that Hydrocarbon resin is distinct from plastic. A

In view of the above discussion, we allow the appeals filed by the Municipal Corporation and Municipal Council, Thane and set aside the order made by the High Court by declaring the goods as falling within the Entry as stated earlier. In the circumstances of the case, the parties on either side shall bear their respective costs. B

V.S.S.

Appeals allowed. C