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GODREJ INDUSTRIES LTD.

v.

D.G. AHIRE ASSISTANT COLLECTOR OF CENTRAL EXCISE & ANOTHER

(Civil Appeal No. 228 of 2003)

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JULY 9, 2008

[ALTAMAS KABIR AND V.S. SIRPURKAR, JJ]

Central Excises and Salt Act, 1944:

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First Schedule – Tariff Items 14F and 68 – "Liquid hair dye" – Classification of for the period January, 1982 to December, 1982 – HELD: Classification list submitted by assessee showing the product under residuary Tariff Item 68 w.e.f. 1.3.1975 was duly approved by Revenue – During relevant

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period the demand made by Revenue according to Tariff Item 14F was erroneous – Judgment of High Court upholding the demand is set aside.

The appellant-assessee was served with three notices dated 2.8.1982, 27.12.1982 and 17.2.1983 demanding excise duty at the rate of 105% for the period January, 1982 to December, 1982 on the item "liquid hair dye" under Tariff Item 14-F of the Central Excises and Salt Act, 1944. The stand of the assessee was that the classification list submitted by it showing the product as covered under residuary entry of Tariff Item 68 liable to excise duty at the rate of 8% had all along been approved by the Revenue since 1.3.1975. However, the demand was confirmed. In the writ petition of the assessee the High Court held that the product of the assessee was covered under Tariff Item 14F as was existing at the relevant time and that even if the product was not covered under Tariff Item 14-F but under Entry no. 68, the assessee was still liable to pay excise duty at the rate of 105% since the same had been collected from the consumers but not passed to the Revenue.

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In the instant appeal filed by the assessee it was contended for the appellant that the High Court erred in holding "hair dye" as "hair lotion". A

Allowing the appeal, the Court

HELD: 1. It will have to be borne in mind that at the relevant point of time, namely, during January, 1982, to December, 1982, there was no specific entry under the Central Excise Tariff regarding "hair dyes", although, "hair lotion" was specified under Tariff Item 14F; and that only with effect from 1st March, 1975, a residuary entry, namely, Tariff Item 68, was introduced, whereby goods which had not been specifically included under any of the other Tariff Items, were made exigible, though at the rate of 8% only. Consequently, appellant's product became taxable on and from 1.3.1975 under Tariff Item 68. It is subsequent to the introduction of Tariff Item no. 68 that appellant was informed that its product did not fall under Tariff Item no. 14F. [para 13 and 37] [576-D,E & F; 586-B,C & D] B C D

2.1 Nothing has been disclosed from any of the technical information gleaned from standard text-books that the appellant's product was anything more than a hair colouring agent or that it was or could be used to have a soothing cleansing or antiseptic action while washing out one's hair. From the chemical analysis of the appellant's product also nothing has been shown as to whether the same could be applied to the scalp for restoration or nourishment of hair, which could bring it within the definition of "lotion" as a medicinal product. [para 40] [587-B,C & D] E F

2.2 Even in common parlance or trader's jargon a hair dye, unless it had other properties besides the capacity to darken hair, could not be equated with hair lotion. Although, not much weight has been given to the affidavits filed on behalf of the appellant, the same cannot be brushed aside in determining what a common man or a trader would understand by the expressions "hair lotion" G H

A **and "hair dye". While in a generic sense a hair dye may also be referred to as hair lotion, for the purposes of a tax statute, its chemical composition and actual usage become relevant. [para 41] [587-D,E & F]**

B **2.3 It was stated that the appellant's preparation was poisonous and had to be used with great care and caution in the manner indicated in the literature supplied with the product. The natural corollary of such submission is that the said product could not, therefore, be treated as a lotion to be used either as a scalp or hair nourisher or for**

C **medicinal purposes. [para 42] [587-F,G & H]**

2.4 The view taken by the High Court was erroneous. During the relevant period, namely, January, 1982 to December, 1982, the demand made on behalf of the Revenue for payment of tariff according to Tariff Item 14F was

D **erroneous and the judgment of the High Court based thereupon is set aside. The demand notices dated 2nd August, 1982, 27th December, 1982 and 17th February, 1983 covering the period from January, 1982 to December, 1982 demanding payment of excise duty under Tariff Item 14F**

E **of the First Schedule to the Central Excises and Salt Act, 1944 are quashed. [para 42 & 43] [588-A, B & C]**

Subhash Chandarnishat vs. Union of India **1979 ELT (J) 212;** *Chimanlal Beliram Mehta vs. M.G. Vaidya* **2000 (124) E.L.T. 40 (Bom);** *Godrej Soaps Ltd vs. State of Andhra*

F *Pradesh* **1983 (53) STC 376;** *Dunlop India Limited Vs. Union of India* **1976 (2) SCC 241;** *Ram Avtar Bhudiaprasad vs. Assistant Sales Tax Officer* **1962 (1) SCR 279; and** *Bharat Sanchar Nigam Ltd. Vs. Union of India* **2006 (3) SCC 1 – re-**

G **ferred to.**

The King vs. Planter Nut and Chocolate Company 1951 Canada Law Reports – Exchequer Court p. 122 – referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 228 of 2003

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From the Judgment and Order dated 17.9.2002 of the High Court of Bombay in W.P. No. 1460/83 A

Ashok H. Desai, R. Ravindran, Sonu Bhatnagar, Ajay Aggarwal, Ravinder Narain and Rajan Narian for the Appellant.

M. Chandra Shekharan, ASG, Shalini Kumar and B. Krishna Prasad for the Respondents. B

The Judgment of the Court was delivered by

ALTAMAS KABIR,J. 1. The appellant is a public limited company which manufactures a variety of cosmetics and toilet preparations, including hair dyes. The appellant is manufacturing such "liquid hair dyes" since May, 1974, when there was no specific entry relating to "hair dyes" under the Central Excise Tariff. However, "hair lotion" is specified under Tariff Item 14F. Since May, 1974, till 13th July, 1982, the Excise Department did not raise any claim in regard to "liquid hair dyes" under Tariff Item 14F and no excise duty was demanded in respect of the said item. C D

2. With effect from 1st March, 1975, Tariff Item 68 was introduced as a residuary entry in the Central Excise Tariff relating to "all other goods not elsewhere specified". As a result, all goods became excisable. Inasmuch as, it had been accepted by the Excise Department that "liquid hair dye" did not fall under Tariff Item 14F, the appellant started paying duty on the said product under Tariff Item 68 with effect from 1st March, 1975. Apparently, the classification list, which was submitted by the appellant, classifying the aforesaid product under Tariff Item 68, was also duly approved. E F

3. In relation to the aforesaid product, for the first time, the respondent No.1 issued a general show-cause notice to the appellant on 13th July, 1982, asking the appellant to show-cause as to why its "liquid hair dye" should not be classified under Tariff Item 14F and charged with duty accordingly. The notice, however, stated that pending determination of the question raised, the classification of the aforesaid product would con- G H

A tinue to be under Tariff Item 68 on a provisional basis and that the appellant would have to execute a bond for provisional assessment under Rule 98. The appellant responded to the notice and filed its written submissions. Despite the above, four specific demand notices dated 2nd August, 1982, 11th October, B 1982, 27th December, 1982 and 17th February, 1983, were issued to the appellant. The demand notice dated 11th October, 1982, was subsequently dropped. The remaining three notices covered the period from January, 1982 to December, 1982.

4. The defence taken by the appellant in its reply to the C show cause notice relied, to a large extent, upon a judgment of a learned Single Judge of the Bombay High Court in the case of Subhash Chandarnishat vs. Union of India, reported in [1979 ELT (J) 212]. The said matter involved two products known as "Vasmol Emulsified Hair Oil" and "Vasmol Pomade". The case D made out by the appellant in that case was that both the aforesaid products were hair dyes meant for the purpose of darkening hair and could not, therefore, be classified under Tariff Item 14F. On a consideration of the material placed before him, the learned Judge held that "Vasmol Emulsified Hair Oil" and E "Vasmol Pomade" did not fall under Tariff Item 14F.

5. The appellant's submission was rejected by the respondent No.1 by his order dated 24th May, 1983, by which he held that the appellant was liable to pay the excise duty as claimed under the three notices referred to above. Consequent to such F determination, a show-cause-cum-demand notice dated 2nd June, 1983, was also served on the appellant demanding the excise duty for the subsequent period from January, 1983 to March, 1983.

G 6. Being aggrieved by the said two notices and the demand notice, the appellant moved the High Court in its writ jurisdiction challenging the said two notices dated 24th May, 1983 and 2nnd June, 1983 and also prayed for appropriate interim orders with regard to the demand notice. The said writ petition was admitted and interim orders were passed thereon.

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7. Elaborate submissions were made on behalf of the parties before the High Court regarding the classification of the appellant's product as a "hair lotion" which would bring it within the ambit of Tariff Item 14F. Apart from the nature and character of the product in relation to the expression "hair dye" used in Tariff Item 14F, it was also submitted on behalf of the excise authorities that while excise duty in respect of items classified under Tariff Item 68 was payable at the rate of 8%, the excise duty payable for items classified under Tariff Item 14F was 105%.

8. It was also urged that commensurate with the sharp difference between the excise duty payable under Tariff Item 68 and Tariff Item 14F, the appellant company had raised the price of its product to the same extent to include the increase in excise duty payable. It was submitted that the appellant had, in fact, collected from the customer the excise duty, which was payable under Tariff Item 14F though camouflaging the same by increasing the price of the product. On behalf of the Excise Department, it was, therefore, submitted by way of an alternate submission that even if the appellant's product was covered under Tariff Item 68, even then the appellant company would be liable to pay duty at the rate of 105%, since the same had been collected from the consumer under the guise of increase in price and had not been passed on to the Excise Department.

9. On consideration of the detailed submissions made on behalf of the parties, the High Court ultimately held that "hair dye" manufactured by the appellant was covered under Tariff Item 14F of the Central Excise Act, 1940, as was existing at the relevant time and that even if the item was not covered under Tariff Item 14F but Entry No. 68, the appellant

Company would still have to pay excise duty at the rate of 105% since the same had been collected from the consumers but had not passed on to the respondents.

10. On the basis of the said reasoning and/or finding, the High Court dismissed the writ petition filed by the appellant and

A vacated the interim order which had continued during the pendency of the writ petition. A consequential direction was also given that respondent would be entitled to recover the excise duty for the relevant period in terms of the impugned order and demand notices.

B 11. While disposing of the writ petition, on the prayer made on behalf of the counsel for the appellant herein, the High Court continued the interim orders passed for a period of eight weeks and directed that no recovery would be made on the basis of the impugned notices and on the basis of the judgment of the C High Court for a period of eight weeks.

12. This appeal has been filed against the said decision of the Bombay High Court.

13. As will be apparent from what has been stated herein- D above, the only issue which falls for decision in this appeal is with regard to the classification of the appellant's product sold in the market as a "hair dye" in relation to the entries under the Central Excise Tariff. While deciding the said issue, it will have to be borne in mind that at the relevant point of time, namely, E during January, 1982, to December, 1982, there was no specific entry under the Central Excise Tariff regarding "hair dyes", although, "hair lotion" was specified under Tariff Item 14F and that only with effect from 1st March, 1975, a residuary entry, namely, Tariff Item 68, was introduced, whereby goods which F had not been specifically included under any of the other Tariff Items, were made exigible, though at the rate of 8% only.

14. Appearing for the appellant company, Mr. Ashok Desai, learned senior advocate, submitted that the relevant period involving the demand for payment of excise duty on "hair dye" G treating the same to be covered by Tariff Item 14F, was for the period from January, 1982 to December, 1982. He also pointed out that by the Finance Act, 1961, Tariff Item 14F was introduced to cover Cosmetics and Toilet Preparations as indicated hereinbelow:-

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"14F – Cosmetic and Toilet Preparations not containing alcohol or Opium India Hemp or other Narcotic Drugs or Narcotics, namely:

(i) Face Cream and Snow;

(ii) Face Powder;

(iii) Talcum Powder;

(iv) Hair Lotion, Cream and Pomade."

15. Mr. Desai submitted that in view of the above, only those products, which fell within the categories indicated in 14F became taxable for the first time in 1961.

16. In May, 1974, Godrej Soaps introduced a new product known as "Godrej – Permanent Hair Dye" (Liquid Hair Dye) in the market. The said product was comprised of two components; one being a darkener and the other being a developer, which were required to be mixed in equal proportion to apply on hair for the purposes of darkening gray hair. Mr. Desai submitted that since the said substance was poisonous in nature, very elaborate instructions had been provided along with the product for its application. At that point of time, no excise duty was levied on the said product under Tariff Item 14F.

17. It was then submitted that on 1st March, 1975, Finance Act, 1975, introduced a residuary entry, namely, Tariff Item 68, in the First Schedule to the Central Excise and Salt Act, 1944 which reads as follows:-

"68 – All other Goods, not elsewhere specified."

Mr. Desai submitted that by virtue of such entry, all goods, including the liquid hair dye manufactured by the appellant became, exigible at the rate of 8%.

18. As submitted by Mr. Desai, the appellant's aforesaid product appears to have been sent for analysis to the Deputy Chief Chemist and by his letter dated 3rd March 1975, the Superintendent of Central Excise Range IV, Division VII, informed

A the appellant company as follows:-

"No.C.E (Samples)/75/540

B'bay 3/3/75

M/s. Godrej Soaps (P) Ltd.

B Bombay

Gentlemen,

Sub: Sample of Godrej Permanent Hair Dye.

C Deputy Chief Chemist has opined that samples of "Godrej Permanent Hair Dye"- Brown and Black" sent to him for analysis, do not fall under Tariff Item 14F(II). This is for your information.

D Yours faithfully,

Sd/- 3.3.75

Supdt. Of Central Excise

Range IV, Division VII"

E 19. Mr. Desai submitted that from the said letter it would be clear that even the Department was alive to the fact that the appellant's product "liquid hair dye' did not fall under Tariff Item 14F, which necessarily implied that it did not answer to the description of "hair lotion" or "pomade" as included in Item No. (iv) F of 14F introduced by the Finance Act of 1961 in the First Schedule to the Central Excise and Salt Act, 1944. According to Mr. Desai, after introduction of Tariff Item 68 by the Finance Act of 1975, the appellant's aforesaid product became exigible under the said entry for which excise duty was being duly paid.

G 20. Mr. Desai then submitted that an identical question, which has been posed in this appeal, had been raised before the Bombay High Court in the case of Chimanlal Beliram Mehta vs. M.G. Vaidya, reported in [2000 (124) E.L.T. 40 (Bom)], where H the plea that hair dye should not be exigible to duty as "hair

lotion" was not accepted and it was held that the same came within the definition of hair lotion and was thus exigible. Mr. Desai submitted that the said decision had been rendered by the Division Bench mainly on the basis of the analysis of the components of the product. Subsequently, however, while dealing with the same question relating to "Vasmol Emulsified Hair Oil" and "Vasmol Pomade" the learned Single Judge of the Bombay High Court in the case of Subhash Chandarnishat vs. Union of India (supra) had distinguished the decision on applying the principle of "common parlance" in describing the product. Mr. Desai referred to the classic example on the concept of common parlance in The King vs. Planter Nut and Chocolate Company (1951 Canada Law Reports – Exchequer Court p. 122) referred to by the learned Single Judge. The question involved in the said decision was whether salted peanuts and cashew nuts could be considered to be "fruit" or "vegetable" within the meaning of the Excise Tax Act. Cameron J., who delivered the judgment, posed the test as follows :

> "..... would a householder when asked to bring home fruit or vegetables for the evening meal bring home salted peanuts, cashew or nuts of any sort? The answer is obviously 'no'."

21. It was then submitted that various affidavits affirmed by customers regarding what they felt was meant by "hair lotion" and "hair dye" had been placed before the departmental authorities, but had not been given due importance in classifying the products in question. Taking note of the above, the learned Single Judge went on to observe as follows:

> "13. In my view, the impugned order of the respondent No.2 shows that he has not really applied his mind to the aforesaid affidavits at all. Although he has noticed them, he has not considered properly the effect of these affidavits. These affidavits were relevant pieces of evidence showing as to how the aforesaid products were regarded in trade and commerce parlance. Instead of

A giving due weight to these affidavits and considering their effect, respondent No.2 has chosen to place undue reliance on the chemical composition of the said products and to some extent on the advertisements, which, I have already pointed out, have moreover been misconstrued by him. B He has further failed to take into account the effect of the cautionary statements, which I have already referred to earlier. In my opinion, respondent No.2, has in effect, ignored the relevant material before him, namely, the said affidavits and has adopted a wholly erroneous approach C in making the impugned order. This is clearly not a case where on the material before him two views were possible or reasonably open to respondent No.2 and he has chosen to adopt one of them. The evidence on record before respondent No2 clearly showed that the aforesaid products D could not be fairly regarded as "hair dressing" or "hair pomade" at all. If one were to pose the question in a somewhat similar form to the question posed by the Exchequer Court of Canada in The King v. Planters Nut and Chocolate Co. Ltd. (1951 Canada Law Reports 122) the question could be framed thus "Supposing a E householder who wanted to darken his hair were to ask his son to go to the provision store and get a bottle of hair pomade or hair dressing, would he expect his son to come back with "Vasmol Emulsified Hair" or "Vasmol Pomade". The answer to that question in my opinion, would be clearly F in the negative on the evidence on record in this petition. In my view, therefore, the decision of respondent No.2 is liable to be quashed."

22. Mr. Desai submitted that the learned Judge went on to G hold that "Vasmol Emulsified Hair Oil" and "Vasmol Pomade" were not covered by Item 14F of the First Schedule to the Act and were not exigible to excise duty under that item.

23. Mr. Desai also referred to a decision in Godrej Soaps Ltd vs. State of Andhra Pradesh, reported in [1983 (53) STC H 376], relating to the very same product, namely, "Godrej Per-

manent Hair Dye". In the said case, the Court was called upon to decide whether "hair dye" is a "hair lotion" which is one of the items mentioned in Entry 36 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. On considering the meaning of the expression "lotion" in detail, the High Court came to the conclusion that hair dye is a colouring material and is used to blacken gray hair. It was not used as a medicinal preparation to cleanse the hair or for skin disorder and was not, therefore, a hair lotion, within the meaning of entry 36 of the Andhra Pradesh General Sales Act, 1957 and was, therefore, taxable under the said Act.

24. It was submitted that as required under the Rules, the appellant company as assessee filed Classification List No. 484 of 1979 classifying "Godrej Permanent Hair Dye" (Liquid Hair Dye) under Tariff Item 68 and it had been duly approved by the Department.

25. Despite the above, on 13th July, 1982, the respondent issued a show-cause notice to the appellant as to why the said "hair dye" should not be classified under Tariff Item No.14F. It was also mentioned that while the matter was pending determination the classification of the said product would continue under Tariff Item 68 on a provisional basis under Rule 9D. On 2nd August, 1982, a show cause-cum-demand notice was issued by the Department alleging short payment of duty under Tariff Item 14F for the period from January, 1982 to June 1982. The said notice was followed by two other show-cause-cum-demand notices, for the periods from July to September, 1982 and from October to December, 1982. Mr. Desai submitted that before the Adjudicating Authority several affidavits sworn by various dealers, retailers and consumers, were filed to show that in commercial parlance, people who dealt with "hair dye" and "hair lotion" considered them to be separate and distinct products. The Assistant Collector by his order dated 24th May, 1983, rejected the explanation given by the appellant company and confirmed the demand made by the Department by the several show-cause-cum-demand notices dated 13th July, 1982, 2nd August, 1982, 27th December 1982 and 17th February, 1983.

A 26. It was submitted that being aggrieved by the said order of the Assistant Collector, the appellant filed Writ Petition No. 1460 of 1983 in the Bombay High Court challenging the said order of the Assistant Collector dated 24th May, 1983, together with the various show-cause-cum-demand notices issued B from time to time. By its judgment and order dated 17th September, 1982, the High Court dismissed the writ petition and upheld the order of the Assistant Collector and directed that the demand be paid.

27. This appeal has been filed against the judgment and C order of the High Court dismissing the writ petition filed by the appellant herein.

28. Relying heavily on the decision of the learned Single Judge of the Bombay High Court in Subhash Chandarnishat's case (supra), Mr. Desai urged that the Division Bench of the D Bombay High Court had wrongly arrived at the conclusion that the appellant's "hair dye" was in fact "hair lotion". Elaborating on his submissions with regard to the application of the commercial parlance test to determine classification of a product Mr. Desai besides referring to the Planters Nut case also re- E ferred to the case of Dunlop India Limited Vs. Union of India, reported in [1976 (2) SCC 241], in which this Court while dealing with VP Latex and referring to the Planters Nut case with approval, held that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the trad- F ers and its popular meaning should commend itself to the authority. It also held that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course.

G 29. Reference was also made to the decision of this Court in the case of Ram Avtar Bhudiaprasad vs. Assistant Sales Tax Officer reported in [1962 (1) SCR 279] wherein while dealing with the meaning of the word "vegetable" occurring in C.P. and Berar Sales Tax Act 1947, this Court held as follows:-

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"This word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language."

31. The decision of this Court in Commissioner of Sales Tax, Madhya Pradesh, Indore vs. M/s Jaswant Singh Charan Singh, reported in [1967 (2) SCR 720], where this Court was dealing with the word 'charcoal', reiterated the same sentiments as were expressed in Ramavtar Budhiaprasad's case (supra).

32. Mr. Desai also submitted that this Court has repeatedly held that affidavits cannot be disregarded, if no evidence to the contrary was produced.

33. It was lastly submitted by Mr. Desai that the use of the word "namely" in Tariff Item 14F would have to be interpreted as exhaustive and confined only to those products specifically mentioned therein against items (i) to (iv). The said expression had been held in various decisions as an equivalent of the expression 'that is to say'. Also referring to the various internet extracts produced on behalf of the appellant company, Mr. Desai concluded by urging that both the Department and the High Court had erred in law in disregarding the well established common parlance test, particularly when the product of the appellant is a counter article available on demand. Mr. Desai submitted that the ordinary consumer does not depend on the text-book concept of "hair lotion" or "hair product" but on the common man's understanding of the product. Mr. Desai submitted that the judgment and order of the High Court, as also that of the Assistant Collector of Central Excise, holding that the appellant's product – "liquid hair dye" was "hair lotion" and including the same in Tariff Item 14F, in place of Tariff Item 68 of the First Schedule to the Central Excise and Sale Act, 1944, was erroneous and liable to be set aside.

A 34. Replying to the submissions made on behalf of the appellant, the learned Additional Solicitor General, Mr. M. Chandra Shekharan, submitted when the Division Bench had found that "hair dye" was, in fact, a "hair lotion", the view expressed by the learned Single Judge in Subhash B Chandarnishat's case, could not be given undue importance as has been done on behalf of the appellant. Referring to the Chambers 20th Century Dictionary, the learned Additional Solicitor General submitted that in the said Dictionary 'Pomade' has been defined to be an ointment for the hair, whereas a lo- C tion is a liquid preparation, either medicinal or of a cosmetic nature. It was submitted that "Vasmol Pomade" was different from the appellant's product in that it contains a small amount of lead acetate and sulphur precipitator and the rest of the material is basically herbal jelly to which herbs and perfumes are D added. As to the affidavit filed before the learned Single Judge, it was submitted that the same had been affirmed by persons who claimed to be either dealers of "Vasmol Products" or consumers of the same and that they have merely stated that the said product was sold and purchased mainly as "hair dye"

E 35. It was submitted that the expression "namely" used in Tariff Item No. 14F had been used in an illustrative and not in a restrictive sense and that the use of the expression "namely" in the Tariff Item did not mean that only the items specified therein would fall within its ambit. It was submitted that the learned Single F Judge had incorrectly held that items or entries in taxing statutes have to be understood according to the meaning given by people in trade and commerce, who were conversant with the subject and that technical and scientific tests offer only guidance within limits. The learned Additional Solicitor General submitted that the affidavits filed before the learned Single Judge G were from traders who stated that "Vasmol Products" were hair darkeners and were not sold as cosmetics. Affidavits filed by users stated that "Vasmol" was being used by them as "hair dye" and not as "hair lotion" or "hair cream". Accordingly the learned Single Judge held that the concerned Vasmol products H were "hair dyes" and not "hair lotions".

36. The learned Additional Solicitor General submitted that the Division Bench had held that the report of the Deputy Chief Chemist, Mumbai and the Chief Chemist, Central Revenue, New Delhi and several books and periodicals, which had been relied upon by the petitioners during the hearing of the appeal, had been considered by the authorities before coming to the conclusion that the product in question was a "hair lotion". It was submitted that the Division Bench had, on placing reliance on standard text-books on which the appellants had relied, indicated that the two expressions "Hair Lotion" and "Hair Dye" could be used interchangeably in the commercial world and that several such products which are nothing but dye, usually with lead base have been known as "Hair Restorers" which were expected to achieve what a "Hair Lotion" or "Hair Tonic" was also expected to achieve. The use of the product as a hair darkener, though a relevant factor, would not be a deciding factor in the matter. The learned Additional Solicitor General submitted that the learned Single Judge had deviated from the Rule of precedent and having regard to the decision of this Court in Bharat Sanchar Nigam Ltd. Vs. Union of India [2006 (3) SCC 1] could not have taken a view different from that of the Division Bench.

37. From the submissions made on behalf of the respective parties and the materials on record, it is clear that the product of the appellant company is undoubtedly, a hair darkener. Whether it also acts as a hair lotion, is the question which calls for decision in order to establish whether the said product would fall under Tariff Item 14F. Extensive arguments were advanced by Counsel for both the parties regarding the chemical composition and the common parlance understanding of the product. The aforesaid product of the appellant company also appears to have been sent for analysis to the Deputy Chief Chemist and his decision was conveyed by the Superintendent of Central Excise Range IV, Division VII, to the appellant company to the effect that the said product did not fall under Tariff Item 14F. Apart from the above, when cosmetics and toilet preparations were made taxable by virtue of the Finance Act, 1961, whereby

A Tariff Item 14F was introduced to cover such preparations, hair lotion as a separate category was included in the said Tariff Item. However, when in May, 1974, the appellant's company introduced its aforesaid product labeled-Godrej-Permanent Hair Dye, no excise duty was levied on the said product under B Tariff Item 14F. It was only after the Finance Act, 1975, introduced a Residuary Entry, being Tariff Item No. 68, in the First Schedule to the Central Excise and Salt Act, 1944, that the appellant's product became taxable on and from 1st March, 1975, under Tariff Item 68. However, while under Tariff Item No. C 14F tariff was imposed at the rate of 105%, tariff under Tariff Item 68 was imposed at the rate of 8%. It is subsequent to the introduction of Tariff Item No. 68 that the appellant's company was informed that its above-mentioned product did not fall under Tariff Item No.14F.

D 38. From the decisions cited by Mr. Desai, it would be clear that there is substantial difference between a hair dye and pomade and that while pomade is an ointment for hair, a lotion is used as a medicinal preparation to cleanse hair or for skin disorders. Since neither of the two definitions answers the de- E scription of the appellant's product, the Court came to the conclusion that the said product was merely a colouring material used for blackening gray hair and not a hair lotion which would stand covered by Tariff Item 14F of the First Schedule to the Act.

F 39. The Division Bench of the Bomaby High Court in the case of Chimanlal Beliram, had no doubt, come to the conclusion that the product in question was a hair lotion. While doing so, the Division Bench had relied on the standard text-books which indicated that the expressions "hair lotion" and "hair dye" G could be used interchangeable in the commercial world and that several such products which are nothing but dye usually with lead base have been known as "hair restorers" which were expected to achieve what a hair lotion or hair tonic was also expected to achieve. A good deal of argument was also ad- H vanced by learned counsel for the parties with regard to Subhash

Chandernishant's case(supra) wherein a learned Single Judge distinguished the decision of the Division Bench in Chimanlal Beliram Mehta's case (supra) relying on classification of a product by virtue of the doctrine of common parlance.

40. The expression "lotion" has been described in Collins English Dictionary as "a liquid preparation having a soothing, cleansing or antiseptic action applied to the skin, eyes etc.". It has also been indicated that the word "lotion" had been derived from the Latin word "lotio" meaning – a washing. Nothing has been disclosed from any of the technical information gleaned from standard text-books that the appellant's product was anything more than a hair colouring agent or that it was or could be used to have a soothing cleansing or antiseptic action while washing out one's hair. From the chemical analysis of the appellant's product nothing has also been shown as to whether the same could be applied to the scalp for restoration or nourishment of hair, which could bring it within the definition of "lotion" as a medicinal product.

41. Apart from the above, even in common parlance or trader's jargon a hair dye, unless it had other properties besides the capacity to darken hair, could not be equated with hair lotion. Although, not much weight has been given to the affidavits filed on behalf of the appellant's company, the same cannot be brushed aside in determining what a common man or a trader would understand by the expressions "hair lotion" and "hair dye". While in a generic sense a hair dye may also be referred to as hair lotion, for the purposes of a taxing statute, its chemical composition and actual usage become relevant.

42. Mr. Desai laid great emphasis on the fact that the appellant's preparation was poisonous and had to be used with great care and caution in the manner indicated in the literature supplied with the product. The natural corollary of such submission is that the said product could not, therefore, be treated as a lotion to be used either as a scalp or hair nourisher or for medicinal purposes.

A 43. We are, therefore, satisfied that the view taken by the High Court was erroneous and during the relevant period, namely, January, 1982 to December, 1982, the demand made on behalf of the Revenue for payment of tariff according to Tariff Item 14F was erroneous and the judgment of the High Court B based thereupon is liable to be set aside.

44. We, accordingly, allow the appeal, set aside the order of the High Court impugned in the appeal and quash the demand Notices dated 2nd August, 1982, 27th December, 1982 and 17th February, 1983 covering the period from January, 1982 C to December, 1982 demanding payment of excise duty under Tariff Item 14F of the First Schedule to the Central Excise and Sal Act, 1944.

45. Having regard to the facts of the case, the parties will bear their own costs.

R.P. Appeal allowed.