ASIAN PAINTS INDIA LTD.

v.

COLLECTOR OF CENTRAL EXCISE

MARCH 23, 1988

[SABYASACHI MUKHARJI & S. RANGANATHAN, JJ.]

Central Excise and Salt Act, 1944—Section 35L and Tariff Item Nos. 14(I)(3)(iv) and 14 (I)(v) of the First Schedule—Classification for purpose of excise levy—Whether "Decoplast" is plastic emulsion paint—Resort to be made to the commercial and popular meaning attached to the items by those dealing in them—Not to scientific and technical meaning.

Statutory Construction—Excise Act—Sales tax Act—Tariff Items not defined—Interpretation of—To be construed in popular sense—Commercial meaning attached to items by people who deal in them to be given.

The question as to whether "Decoplast" manufactured by the appellant is plastic emulsion paint or not had been determined in the affirmative by the Revenue, and revision application before the Government of India was rejected.

Thereafter the appellant moved the Bombay High Court, which directed the Customs Excise and Gold (Control) Appellate Tribunal to hear the petition and to decide the same as an appeal before it. On behalf of the appellant, elaborate evidence had been adduced before the Tribunal. Reference was made to the specifications of plastic emulsion paint and the definition as given by ISI. The Tribunal addressed itself to the question whether "Decoplast" could be considered as plastic emulsion paint having regard to (i) its composition; (ii) its characteristics; (iii) its uses and (iv) its reputation in trade parlance, and held that "Decoplast" is a plastic emulsion paint.

Aggrieved by the order the appellant appealed under Section 35L of the Central Excise and Salt Act, 1944 to this Court, which.

Dismissing the appeal,

HELD: 1.1 The commercial meaning has to be given to the expressions in Tariff items. Where definition of a word has not been given, it

must be construed in its popular sense. Popular sense means that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it. [343G]

1.2 In the instant case the use of these two items and their composition, when analysed, revealed that in essence they performed the same functions as plastic emulsion paint does, though there was some difference in them. The affidavits of traders and others were examined by the Tribunal. The Revenue did not adduce evidence in rebuttal. Therefore, in view of the composition, characteristics, uses and how it is known in the trade, the Tribunal came to the conclusion that "Decoplast" was plastic emulsion paint. This is a finding of fact arrived at on relevant and valid materials. There was no misdirection in law. [344C-E]

2. In interpreting items in statutes like the Excise Act or Sales Tax Act, resort should be had, not to the scientific and technical meaning of the terms or expressions used, but to the popular meaning, that is to say, the meaning attached to them by those dealing in them. [343H; 344A-B]

C.I.T., Andhra Pradesh **v.** *M/s. Taj Mahal Hotel, Secunderabad* [1972] **1 SCR 168 and** *Indo International Industries* **v.** *Commissioner of Sales Tax, U.P.*, [1981] **3 SCR 294, referred to.**

King **v.** *Planter's Co.*, [1951] **CLR (Ex.) 122 and** *'Two Hundred Chests of Tea'*, [1824] **6 L.Ed. 128, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2456 of 1987.

From the Order dated 27.5.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E-2312/85-C.

K.K. Venugopal, R. Narain, S. Ganesh, R. Shah, R.K. Ram and D.N. Mishra for the Appellant.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. In this appeal under section 35L of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act'), the question involved is whether "Decoplast" manufactured by the Asian Paints India Ltd., the appellant herein, is plastic emulsion paint

and, therefore, classifiable under Tariff Item 14(I)(3)(iv) of the First Schedule of the Act as plastic emulsion paint or it should be classifiable under Tariff Item No. 14(I)(v) that is as "paints not otherwise specified". A

The Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'the CEGAT'), by the impugned Order challenged in this appeal held that Decoplast is plastic emulsion paint. The appellant felt aggrieved thereby. In so holding the Technical Member of the Tribunal observed that in view of its composition, characteristics and uses, Decoplast should be considered as emulsion paint. The Judicial Member of the Tribunal was of the view that the Revenue had not adduced any evidence of rebuttal of the evidence adduced by the appellant as the commercial understanding but the evidence adduced by the appellant was intrinsically untrustworthy. Therefore, inspite of the affidavits and absence of evidence in rebuttal, he agreed with the other member that Decoplast is plastic emulsion paint and the appeal before the Tribunal should be dismissed. B C D

It appears that the appellants had filed revision application before the Government of India against the Order of the Revenue authorities. Ultimately, the same was rejected by the Government of India. It is not necessary to set out in detail all the events. The appellant had moved the High Court of Bombay against the Order of the Government of India and the High Court by its Order directed as follows: E

> "The order dated 17th December, 1979 passed by the Govt. of India in revision in the Petitioners' case is set aside inasmuch as the Revision Authorities have not controverted or rebutted the evidence in the form of affidavits relied on by the Petitioners to show that their product could not be regarded as a plastic emulsion paint amongst persons dealing in such products. The Revision order thus failed to follow the well established rule of interpreting entries in the Excise Tariff namely to classify products by their common parlance and trade understanding and not by their scientific or technical meaning. It is necessary that the matter be remanded to the Revision Authorities to decide the same afresh according to law. However, as the Revision Authority under the demanded Central Excise and Salt Act has been replaced by the Customs Excise and Gold (Control) Appellate Tribunal, the said Tribunal is directed to F G H

A hear the Petitioners' Revision Petition and to determine the same as an appeal before it. The Tribunal shall give an opportunity to both the petitioners and the Excise Authorities to rely on any evidence and material either on record or otherwise which they may lead or produce in support of their case. The parties will be given full opportunity of B affidavits if any during the hearing".

In pursuance to the said Order, the matter came before the Tribunal. Before the Tribunal it was contended on behalf of the appellant that the manufacture was water thinable paint but the same could not be held to be plastic emulsion paint for the product was not known in the trade as plastic emulsion paint nor was it bought and sold so. C According to the appellant, the paint essentially comprised of pigment and a binder or a vehicle and that while the binder and the vehicle were interchangeable, it was stated that the binder generally referred to solid part which in this case was synthetic resin and the solvent could be water or some other diluent. There was elaborate evidence adduced D before the Tribunal on behalf of the appellant. Reference was made to the specifications of plastic emulsion paint as given by ISI. It was contended on behalf of the appellant that Decoplast could not be considered as plastic emulsion paint for reasons, *inter alia*, as follow:

i) Plastic emulsion paint comprises of one emulsion as against E two contained in Decoplast;

ii) In the case of plastic emulsion drying takes place by evaporation of water whereas in the case of decoplast by oxidation of alkyd;

F iii) Trade did not recognise decoplast as plastic emulsion paint;

iv) In the literature published by them, decoplast was not described as plastic emulsion paint;

v) Decoplast was substitute for cement paint;

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vi) Even though decoplast could be used both for interior and exterior use, it was a product inferior to plastic emulsion paint;

vii) In case of plastic emulsion paint, primer had to be applied to H the surface to be pained while in the case of Decoplast on

coating on Decoplast itself serves as a primer.

In support of appellant's contention, affidavits had been filed by them and the same were considered in extenso by the Tribunal. Reference has also been made to the Book "Outlines of Paint Technology" by W.M. Morgan. On the other hand, on behalf of the Revenue, it was stated that it was not disputed that Decoplast is a water soluble paint and that it had got two resins in emulsion form, namely, Polymer Vinyle Acetate and copolymer alkyds. Attention was drawn to the Indian Standard Specification for plastic emulsion paint, which is as follow:

> "The material shall consist of pigments with suitable extenders in suitable proportions, in a medium consisting of any state synthetic polymer emulsion in water with other suitable ingredients as may be necessary to produce a material so also satisfy the requirements of this standard."

Our attention was also drawn to the definition given by ISI, which is as under:

> "Generally, a paint in which the medium is an 'emulsion' or an emulsion-like dispersion of an organic binder in water. Industrially the same is mainly restricted to those paints in which the medium is an 'emulsion' of a synthetic resin. The medium may also be called a latex by analogy with a natural rubber latex, polyvinyl acetat emulsion paint is a typical example".

The Tribunal addressed itself to the question whether Decoplast could be considered as plastic emulsion paint in view of (i) its composition; (ii) its characteristics; (iii) its uses; and (iv) its reputation in trade parlance.

It is well settled that the commercial meaning has to be given to the expressions in Tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject-matter with which the Statute is dealing, would attribute to it. See—*C.I.T., Andhra Pradesh* v. *M/s. Taj Mahal Hotel, Secunderabad,* [1972] 1 SCR 168. This Court observed in *Indo International Industries* v. *Commissioner of Sales Tax, U.P.,* [1981] 3 SCR 294 that in interpreting items in statutes like the Excise Act or Sales Tax Acts, whose primary object

A was to raise revenue and for which purpose to classify diverse products, articles and substances, resort should be had, not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them.

B Justice Cameron of the Canadian Exchequer Court in *King* v. *Planter's Co.*, [1951] CLR (Ex.) 122 and the decision of the United States Supreme Court in *'Two Hundred Chests of Tea'*, [1824] 6 L.Ed. 128 emphasised that commercial understanding in respect of the tariff items should be preferred. It was observed that the legislature does not suppose our merchants to be naturalists or geologists, or botanists.

C In this case the use of these two items and their composition when analysed, revealed that in essence they performed the same functions as plastic emulsion paint does, though there was some difference in them. Affidavits of traders and others had been filed. These were examined and accepted by the Technical Member and these were not D rejected by the Judicial Member. The Revenue did not adduce any evidence in rebuttal. Therefore, in view of the composition, characteristics, user and how it is known in the trade, the Tribunal came to the conclusion that Decoplast was plastic emulsion paint. This is a finding of fact arrived at on relevant and valid materials. There was no misdirection in law. Therefore, there is no ground for interference E with the said Order.

In the aforesaid view of the matter, we decline to entertain the appeal under section 35L of the Act. The appeal is, therefore, dismissed.

F G.N. Appeal dismissed.