PETITIONER:
M/S GUJARAT COMPOSITE LTD. & ANR

Vs.

RESPONDENT:
RANIP NAGARPALIKA & ANR.

DATE OF JUDGMENT: 02/11/1999

BENCH:
S.P.Bharucha, V.N.Khari

JUDGMENT:

J U D G ME N T

Bharucha, J.

For the manufacture of their end products, the appellants bring raw asbestos into the area of the Ranip Nagarpalika, the first respondent. The question is whether they are liable to pay octroi under Entry 70 of Schedule I of the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964, as they contend, or under Entry 71 thereof, as the respondents contend. Entry 71 is the general residuary entry. Entry 70, as we have ascertained from the relevant Gazette, reads (precisely) thus :

Silica, Quartz, Zircon sand, Felspar, Gypsum, Grog Minerals and Oxides used as raw materials.

The High Court, being approached by the appellants, dismissed their Writ Petition by the order under challenge. It found that there were disputed questions of fact, as to whether raw asbestos was a mineral and whether grog was a mineral.

That raw asbestos is a mineral has been found by this Court in the judgments in Hyderabad Industries Limited vs. Union of India (1995) 5 SCC 338 and (1999) 5 SCC 15. The only issue that has, therefore, been addressed by learned counsel for the parties is in relation to the Entries aforementioned.

The said Entry 70 comprehends (1) Silica, (2) Quartz, (3) Zircon sand, (4) Felspar, (5) Gypsum and (6) Oxides when used as raw materials. The question is in relation to Grog Minerals; do these words in the said Entry 70 refer to (1) Grog and (2) Minerals, or do they refer to one item known as Grog minerals. It will be seen that each item in the said Entry 70, other than Grog Minerals, starts with a capital letter and is separated from the other by a comma. Where the item consists of two words, as in Zircon sand, Zircon has a capital Z and sand has a small s. There is, therefore, a patent error in the printing of said Entry 70. Either there should have been a comma between Grog and Minerals therein or Minerals should have had a small m.

The word Grog usually means potable liquor, but it also means a substance used in refractories. It is, according to the Encyclopedia Brittancia, 1980 Edition, Macropaedia, Volume IV (quoted in the judgment of the High Court under challenge) mortar made of aluminium compounds and used as a refractory, sprayed to form linings of furnaces and ovens. Dealing with grog chemicals, the Encyclopedia states that most refractories are produced in the form of brick, bonded and fired in furnaces. Some castable refractories are made in the form of mortars, usually tabular alumina with calcium aluminate cement as a binder. These mortars, called grog, are sprayed under pressure to form the linings of the steel industrys basic oxygen furnaces, electric ore furnaces, steel ladles and coke ovens, and for steam boilers, rotary kilns, and many other high temperature applications.

The case of the respondents initially was that Grogmineral was a single word. In a later affidavit it stated that the said Entry 70 referred to an item called Grog Minerals and, in this behalf, all that was referred to was an invoice of the Sihor Nagar Palika which showed that eight tonnes of grog minerals had been produced by M/s Prakash Traders and imported into Sihor by Hightech Investment Pvt. Ltd. wherein octroi had been charged. Hightech Investment Pvt. Ltd. purchased the grog minerals from Bhavnagar Refrectories and Ceramics Manufacturing Company. It appears from the affidavit that the respondents had the grog minerals produced as aforesaid analysed by Italab Private Limited. The report of the analysis shows that this product was a compound of silica, alumina, ferrous oxide, titanium dioxide, manganese oxide, calcium oxide, magnesium oxide, phosphorous penzoxide, sulpher trioxides, sodium oxide and potassium oxide; in other words, that it is not a mineral but a grog chemical of the kind referred to above.

Were there a material known to the technical world as grog mineral, there would have been ample literature on the subject and the respondents would have produced it, particularly since, according to the appellants, there is no such thing. The appellants rely upon the opinion of the Director, Geology & Mining, Ahmedabad that, to the best of his knowledge, there is no mineral called grog.

Grog and minerals, on the other hand, are known to the technical world and the said Entry 70 would make perfect sense if the items grog and minerals therein were read separately. That this should be done is also indicated by the fact that the word Minerals therein starts with the capital M as does every item in the said Entry 70 and by the fact that where the item is a composite of two words as in Zircon sand the second word starts with a small letter.

The learned Attorney General, appearing on behalf of the first respondent, submitted that it was not the function of the Court to supply a comma between Grog and Minerals and that the said Entry 70 should be read only as referring to an item called Grog Minerals. In this behalf he drew our attention to the judgment of this Court in Shrimati Hira Devi and Ors. Vs. District Board, Shahjahanpur (1952 SCR 1122) where it was said that it is the duty of the court to try to harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill

in gaps or omissions in the provisions of an Act. Reference was also made to Nalinakhya Bysack vs. Shyam Sunder Haldar and Ors. (1953 SCR 533) where it was said that it was not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature, the Court cannot aid the Legislatures defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is for others than the Courts to remedy the defect. In P.K. Unni vs. Nirmala Industries and Ors. (1990 (2) SCC 378) this Court said that it must proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said. Assuming there was a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. Where, however, the language of the statute led to manifest contradiction of the apparent purpose of the enactment, the court could adopt a construction which would carry out the obvious intention of the legislature. In doing so, as Denning, L.J., had said, A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

We are, in the first place, not dealing with a statute and we are not adding or subtracting words. We are dealing with an Entry in Rules that is, manifestly erroneously printed, as pointed out above. We are trying to make sense of that Entry by ironing out its creases. There being no such item known to the technical world as Grog Minerals, it is patent that the said Entry 70 was intended to cover (1) Grog and (2) Minerals. This is the only manner in which any sense can be made of the said Entry 70. That being so and raw asbestos being a mineral which is used by the appellants as a raw material, the appellants are entitled to pay octroi on the raw asbestos they bring into the respondents area under the said Entry 70 and not under the residuary Entry 71.

The appeal is allowed, and the judgment and order under appeal is set aside.

At an interim stage of this appeal, the appellants were required to pay octroi as demanded but it was made clear that in the event the appeal was allowed the respondent would refund the excess amount of the octroi paid by the appellants with interest at the rate of 15 per cent per annum. Now that the appeal is allowed, the respondent shall refund to the appellants the excess amount of the octroi paid to date with interest thereon at the rate of 15 per cent per annum.

In view of the order upon the civil appeal, the writ petition does not survive for consideration and it is disposed of.

No order as to costs.

JUDIS