

## COMMISSIONER OF SALES TAX, U.P.

v.

DR. SUKH DEO

August 19, 1968

[J. C. SHAH AND V. RAMASWAMI, JJ.]

*U.P. Sales Tax Act 1948—Notification No. S.T. 3504/X, dated May 10, 1956 issued under power given by s. 3A of the Act—Single point tax payable on sale by manufacture of medicines and pharmaceuticals—Medicines dispensed by medical practitioner to his patients—Such dispensing whether 'manufacture' within meaning of notification—Whether taxable.*

The respondent was a medical practitioner in Uttar Pradesh and maintained a dispensary from which medicines were issued to his patients according to his prescriptions. According to notification No. S.T. 3504/X, dated May 10, 1956 issued under s. 3A of the U.P. Sales Tax Act, 1948, tax in respect of sale of medicines and pharmaceuticals manufactured in the State was payable at single point on the sale effected by the manufacturer. The Sales Tax Officer held that dispensing of medicines was 'manufacture' within the meaning of the aforesaid notification and assessed the respondent to sales tax for the year 1956-57 on the turnover of medicines dispensed. The order was confirmed by the appellate and revisional authorities, but the High Court decided in favour of the respondent. The State appealed.

**HELD :** When as prescribed by a medical practitioner, a mixture of different drugs is prepared by the medical practitioner or by his employees specially for the use of a patient in the treatment of an ailment or discomfort diagnosed by the medical practitioner by his professional skill, and which mixture is normally incapable of being passed from hand to hand as a commercial commodity, the medical practitioner supplying the medicines cannot be said to be a manufacturer of the mixture and the mixture cannot be said to be manufactured within the meaning of the notification. [712 G-H]

In the absence of clearer phraseology the Court would not in a taxing provision be willing to give an interpretation whereby a medical practitioner supplying to his patients medicines and pharmaceutical preparations separately is not liable to tax, but when under his direction they are mixed by his employees for the special use of a patient under his treatment and to achieve a specific purpose, the turnover from the resultant mixture is taxable. [713 D]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2458 of 1966.

Appeal by special leave from the judgment and decree dated April 1, 1963 of the Allahabad High Court in Sales-tax Reference No. 391 of 1959.

*C. B. Agarwala and O. P. Rana, for the appellant.*

*J. P. Goyal and Sobhag Mal Jain, for the respondent.*

**A** The Judgment of the Court was delivered by

**Shah, J.** The Judge (Revisions) Sales Tax, U.P., Lucknow, referred the following question to the High Court of Allahabad for opinion :

**B** "Whether the preparation of medicines on prescriptions of the applicant amounted to a manufacture of "medicines and pharmaceutical preparations" within the meaning of notification No. S.T. 3504/X dated 10th May, 1956, and whether the applicant was assessable to tax on the turnover of the medicines so dispensed?"

**C** The High Court held that the respondent was not a manufacturer of medicines and pharmaceutical preparations within the meaning of the notification. Against the answer recorded by the High Court, the Commissioner of Sales Tax, U.P., has appealed to this Court with special leave.

**D** The respondent is a medical practitioner and in the performance of his professional duties he examines patients, advises them and prescribes medicines which are issued from his dispensary. The Sales Tax Officer being of the view that the dispensing of medicines, according to the prescriptions issued by the respondent, amounted to manufacture of medicines within the meaning of the notification No. S.T. 3504/X dated May 10, 1956, assessed the respondent to pay tax on a turnover of Rs. 12,943 for the year 1956-57. The order was confirmed in appeal by the Judge (Appeals) and was further confirmed by the Judge (Revisions) Sales Tax.

The sole question which falls to be determined in this appeal is whether by virtue of the notification, the respondent is exempt from liability to pay tax.

**F** Section 3 of the U.P. Sales Tax Act, 1948, makes every dealer liable to pay in each assessment year a tax at a certain rate on the turnover. Section 3A provides :

**G** "Notwithstanding anything contained in section 3 the State Government may... declare that the turnover in respect of any goods... shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify."

On May 10, 1965, the Governor of Uttar Pradesh issued a notification No. S.T. 3504/X that—

**H** "In exercise of the powers conferred by section 3A of the U.P. Sales Tax Act, 1948, as amended from time to time, and in supersession of all the previous notifica-

tions on the subject, the Governor of Uttar Pradesh is hereby pleased to declare that with effect from May 8, 1956, the turnover in respect of medicines and pharmaceutical preparations shall not be liable to tax except—

- (a) in the case of medicines and pharmaceutical preparations imported from outside Uttar Pradesh, at the point of sale by the importer, and
- (b) in the case of medicines and pharmaceutical preparations manufactured, in Uttar Pradesh, at the point of sale by the manufacturer;

And the Governor is further pleased to declare that such turnover shall with effect from the said date be taxed at the rate of . . . ."

The respondent is not an importer of medicines and pharmaceutical preparations from outside Uttar Pradesh. That is common ground. The Revenue authorities, however, held that when in his dispensary medicines and pharmaceutical preparations as prescribed by him were mixed, the process of mixing resulted in "manufacture" of medicines by him as a "manufacturer". The expression "manufacture" has in ordinary acceptation a wide connotation : it means making of articles, or material commercially different from the basic components, by physical labour or mechanical process; and a manufacturer is a person by whom or under whose direction and control the articles or materials are made. The notification in the first instance exempts from tax sales of medicines and pharmaceutical preparations. It then proceeds to withdraw the exemption in respect of two classes of sales of medicines and pharmaceutical preparations, (i) sale by an importer of medicines etc., imported from outside the State and (ii) sale by a manufacturer of medicines etc., manufactured in the State. The tax levied in respect of the excepted categories is a single point tax : it may be levied when medicines and pharmaceutical preparations manufactured in the State of Uttar Pradesh are sold by the manufacturer.

In our judgment when, as prescribed by a medical practitioner, a mixture of different drugs is prepared by the medical practitioner or by his employees specially for the use of a patient in the treatment of an ailment or discomfort diagnosed by the medical practitioner by his professional skill, and which mixture is normally incapable of being passed from hand to hand as a commercial commodity, the medical practitioner supplying the medicines cannot be said to be a manufacturer of the mixture and the mixture cannot be said to be manufactured within the mean-

- A ing of the notification. Exemption granted by the notification ceases to apply under cl. (a) if the importer of medicines and pharmaceutical preparations manufactured outside the State sells them, and under cl. (b) if the manufacturer of medicines and pharmaceutical preparations manufactured in Uttar Pradesh sells them. The scheme therefore is to levy sales-tax at one point
- B only, viz., at the point of sale by the importer in respect of medicines imported by him into the State, and at the point of sale by the manufacturer of medicines manufactured by him within the State. If preparation of a mixture of drugs as prescribed by a medical practitioner in his own dispensary is not manufacture of medicines or pharmaceutical preparation, the exception clause of the notification will have no application.
- C
- D

Acceptance of the contention by the Revenue would imply that a medical practitioner supplying to his patients medicines and pharmaceutical preparations separately is not liable to tax : when under his direction they are mixed by his employees for the special use of a patient under his treatment and to achieve a specific purpose, the turnover from the resultant mixture is taxable. In the absence of clearer phraseology, the Court would not in a taxing provision be willing to give that interpretation.

The appeal therefore fails and is dismissed. The delay in filing the respondent's statement of the case is condoned. There will be no order as to costs in this appeal.

G.C.

*Appeal dismissed.*