APHALI PHARMACEUTICALS LTD. A

v.

STATE OF MAHARASHTRA & ORS.

SEPTEMBER 19, 1989

[G.L. OZA AND K.N. SAIKIA, JJ.] B

Medicinal and Toilet Preparations (Excise Duties) Act 1955—Amendment Act 19 of 1961—Finance Act 1962—Section 18 thereof—Levy of excise duty on the product "Ashvagandharist" manufactured by the appellant—Whether permissible under the schedule to the Act as amended—Effect and Interpretation of Explanation I added to the Schedule of the Act by Finance Act 1962—Circular dated May 31, 1962 issued by the Government of Maharashtra—Whether in conformity with the provisions of the Act and Explanation I of the Schedule. C

Medicinal and Toilet Preparation (Excise Duties) Rules 1956—Rules 64 to 66 whether consistent with the schedule and the circular dated 31.5.1962. D

The appellant is a company having its registered office at Ahmednagar in Maharashtra. It carries on business as manufacturers of Ayurvedic preparations including "Asvas" and "Aristhas". At the material time the appellant was manufacturing and selling an Ayurvedic product "Ashvagandharist" which is a medicinal preparation containing self-generated alcohol but not capable of being consumed as ordinary alcoholic beverages. E

Medicinal and Toilet Preparations (Excise Duties) Act 1955 came into force on 1.4.1957. The schedule to the said Act contained two items specifying "medicinal and toilet preparations containing alcohol" which are prepared by distillation or to which alcohol has been added and which are capable of being consumed as ordinary "alcoholic beverage" and "medicinal and toilet preparations not otherwise specified containing alcohol" as the commodities excisable under the provisions of the Act. The said "Ashvagandharist" was treated and accepted by the Excise Authorities as being exempt from the payment of excise duty upon the basis and footing that the same was an Ayurvedic preparation containing self-generated alcohol which was not capable of being consumed as ordinary alcoholic beverage and which fell under item 2(i) of the schedule in respect of which, the rate of excise duty prescribed in the schedule was "Nil". F G H

A The Act was amended by Amendment Act 19 of 1961 whereby concept of "patent and proprietary" medicine was introduced in the schedule. The Amendment Act, by an Explanation introduced in the schedule the definition of "patent and proprietary" medicine contained in the Drugs Act 1940. Despite the said amendment in the schedule the appellants' product continued to be treated as exempt from the liability B to pay excise duty on the ground that it was covered under item 2(i) of the schedule which item was re-numbered as item 3(i) of the schedule. Thereafter by section 18 of the Finance Act 1962, the Act was further amended by substitution of Explanation I to the schedule of the Act. By the said explanation, a "patent and proprietary" medicine was defined as a medicinal preparation of the description and the type specified in the Explanation. The said Explanation was given retrospective effect C from April 23, 1962. In pursuance of the said Explanation I brought by the Finance Act, Director of Prohibition and Central Excise, Govt. of Maharashtra, Bombay issued a circular dated May 31, 1962, which *inter alia* directed that the medicinal preparations containing self-generated alcohol but not capable of being consumed as alcoholic bever-D age were to be treated as products falling under Item No. 1 and not Item 3 of the schedule. As a result of that circular, the Respondents levied excise duty on the appellants' product amounting to Rs.2,18,282.16p. and realized the same from the appellant. The appellant paid the amount "under protest".

E With a view to recover the aforesaid amount, which according to the appellant, was illegally recovered by the Respondents, the appellant filed a suit, being special suit No. 23 of 1965 in the Court of Civil Judge Sr. Division, Ahmednagar.

The Civil Judge by his order dated 27.3.69 decreed the appellant-F plaintiff's suit with interest at 6% per annum from the date of the suit till realisation.

The Respondents appealed to the High Court against the Order of the Civil Judge and the High Court allowed the appeal, reversed the Judgment and decree passed by the Civil Judge and dismissed the G appellant's suit. Hence this appeal by the plaintiff-appellant by special leave.

Allowing the appeal, this Court,

HELD: From Explanation I of the Schedule of the Act as sub-H stituted by Act 5 of 1964 it is clear that patent or proprietary medicine

means any medicinal preparation which is not specified in a monograph in a Pharmacopoeia, Formulary or other publications notified in this behalf by the Central Government in the Official Gazette. [144C] A

To be a patent medicine one would be required to have a patent. A patented article means an article in respect of which a patent is in force. [144D] B

A patent medicine will, therefore, mean medicine in respect of which a patent is in force. [144E]

Patent means a grant of some privilege, property, or authority, made by the Government or sovereign of a country to one or more individuals. A proprietor is one who has the legal right or exclusive title to anything. It is synonymous with owner. A person entitled to a trade mark or a design under the Acts for the registration or patenting of trade mark or design is called a proprietor of the trade mark or design. [144E-F] C

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A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. [147F]

The Schedule may be used in construing provisions in the body of the Act. It is as much an Act of the Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against express enactment and in case of any inconsistency between the schedule and the enactment, the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act. [147H; 148A-B] E

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An explanation is different in nature form a proviso, for a proviso excepts, excludes or restricts while an explanation explains or clarifies. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself. [149F]

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Bihta Marketing Union v. *Bank of Bihar,* AIR 1967 SC 389: [1967] 1 SCR 848; *State of Bombay* v. *United Motors,* AIR 1953 SC 252: [1953] SCR 1069; *Collector of Customs* v. *G. Dass & Co.,* AIR 1966 SC 1577; *Burmah Shell Oil Ltd.* v. *Commercial Tax Officer,* AIR 1961 SC 315: [1961] 1 SCR 902; *Dattatraya Govind Mahajan* v. *State of Maharashtra,* AIR 1977 SC 915 (928): [1977] 2 SCR 790 and *Hiralal* H

A *Ratanlal* v. *State of U.P.*, [1973] 1 SCC 216.

Ex praecedentibus et consequentibus optima fit interpretatio. **The best interpretation is made from the context.** *Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare Vel respondere.* **It is unjust to decide or respond as to any particular part of**
B **a law without examining the whole of the law.** *Interpretare et concordare leges ligibus, est optimus interpretendi modus.* **To interpret and in such a way as to harmonize laws with laws, is the best mode of interpretation. [151G-H]**

Jura eodem modo distituentur quo constitutuntur. **Laws are ab-**
C **rogated by the same means (authority) by which they are made. [152A]**

Every word in a Statute is to be given a meaning. A construction which would leave without effect any part of the language of a statute will normally be rejected. Every clause of a statute is to be construed with reference to the context and other clauses of the Act so as to make,
D **as far as possible, a consistent enactment of the whole statute. [152B]**

A specific provision to include Ayurvedic preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages was necessary. That having not been done by the Explanation itself, it was not permissible to include it by the
E **Circular. The Explanation I could not have been in conflict with the provisions of the Act and the Circular could not have been in conflict with the Explanation, the Schedule, the Rules and the Act. [152E-F]**

The Court set aside the order of the High Court and restored that of the Civil Judge decreeing the suit. [152G]

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Inland Revenue Commissioners v. *Gittus*, [1920] 1 KB 563; *Baidyanath Ayurved Bhawan Pvt. Ltd.* v. *The Excise Commissioner, U.P.*, [1971] 2 SCR 590; *Mohanlal Maganlal Bhavsar* v. *Union of India*, [1986] 1 SCC 122; *Commissioner of Sales Tax* v. *The Modi Sugar Mills Ltd.*, [1961] 2 SCR 189 and *Cape Brandy Syndicate* v. *Commis-*
G *sioners of Inland Revenue*, [1921] 1 KB 64, **referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1845 (N) of 1974.

From the Judgment and Decree dated 6/7.3.1974 of the Bombay
H High Court in First Appeal No. 586 of 1969.

S.K. Dholakia and H.S. Parihar for the Appellant.

A.K. Ganguli, A.M. Khanwilkar, A. Subba Rao, C.V. Subba Rao and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

SAIKIA, J. This plaintiff's appeal by special leave is from the Appellate Judgment and Decree of the High Court of Judicature at Bombay reversing those of the trial court and dismissing plaintiff's special suit.

The appellant is a Limited Company registered under the Companies Act having its registered office situate at Ahmednagar within the State of Maharashtra. The appellant carries on business, *inter alia*, as manufacturers of Ayurvedic preparations including "Asavas", "Aristhas". At all times material to this appeal, the appellant was manufacturing and selling an Ayurvedic product called "Ashvagandhaarist" which is a medicinal preparation containing self-generated alcohol but not capable of being consumed as ordinary alcoholic beverage.

Under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, hereinafter referred to as "the Act", which came into force on 1st April, 1957, excise duties were levied on medicinal and toilet preparations specified in the Schedule to the Act, hereinafter referred to as "the Schedule". The Act, as originally stood in 1955, *inter alia,* contained two items in the Schedule respectively specifying "medicinal and toilet preparations containing alcohol which are prepared by distillation or to which alcohol has been added and which are capable of being consumed as ordinary "alcoholic beverage" and "medicinal and toilet preparations not otherwise specified containing alcohol", being the commodities excisable under the provisions of the Act. The said "Ashvagandhaarist" was treated and accepted by the Excise Authorities as being exempt from the payment of any excise duty upon the basis and the footing that the same was an Ayurvedic preparation containing self-generated alcohol which was not capable of being consumed as ordinary alcoholic beverage, and which fell under item 2(i) of the Schedule in respect of which the rate of excise duty postulated in the Schedule was "Nil".

The Act was amended by the Amendment Act 19 of 1961. The amendment, *inter alia*, introduced the concept of "patent and pro-

A prietary medicine" in the Schedule. The amendment Act, however, by an Explanation, introduced in the Schedule the definition of the "patent and proprietary medicine" contained in the Drugs Act, 1940. Even after the introduction of the said amendment, the appellant's aforesaid product continued to be treated as exempt from the liability to pay any excise duty on the self-same ground, namely, that it was B covered under item 2(i) of the Schedule which item 2(i) was re-numbered as item 3(i) of the Schedule as amended by the Amendment Act of 1961.

By Section 18 of the Finance Act, 1962, the Act was further amended by substitution of an Explanation No. 1 to the Schedule of C the Act. By virtue of and under the said Explanation, a patent and proprietary medicine was defined as a medicinal preparation of the description and the type specified in the Explanation. The Explanation which was brought in by the Finance Act was given retrospective effect from April 23, 1962.

D

In purported pursuance of the said Explanation and/or upon the basis thereof, a circular dated May 31, 1962 was issued by the then Director of Prohibition and Central Excise, Government of Maharashtra, Bombay which, *inter alia*, directed that the medicinal preparations containing self-generated alcohol but not capable of being consumed E as alcoholic beverage were to be treated as products falling under item 1 and not item 3 of the Schedule. consequent thereupon, the respondents levied and recovered from the appellant diverse sums aggregating to Rs.2,18,282.16 being the alleged amount of the excise duty payable in respect of the product "Ashvagandharist". The amounts were paid by the appellant "under protest".

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With a view to enforcing their rights in respect thereof and/or recovering the said amount illegally recovered by the respondents, on July 14, 1965, the appellant filed a suit, being Special Suit No. 23 of 1965 in the Court of Civil Judge, Senior Division, Ahmednagar.

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On March 4, 1966, the respondent No. 4 filed its written statement and similarly on the 4th April, 1966 the respondent Nos. 1 to 3 filed written statements. In the written statements, filed on behalf of the respondents it was, *inter alia*, contended that the said product of the appellant was "the unrestricted ayurvedic preparations" manu-H factured by the plaintiff (appellant) labelled and marked by the

plaintiff (appellant) under their brand name and trade mark. This, therefore, fell within the scope of patent or proprietary medicine as given in Explanation 1 below the Schedule annexed to the Act, as inserted from April 23, 1962 by Finance Act (No. 2) 1962. A

By his Judgment and Decree dated March 27, 1969, the learned Civil Judge was pleased to decree the appellant's suit for Rs.2,22,582.07 together with future interest at 6 per cent per annum from the date of the suit till realisation. B

Aggrieved by the Judgment and Order dated March 27, 1969, the respondents (being the defendants therein) preferred an appeal to the High Court of Judicature at Bombay, which was registered as First Appeal No. 586 of 1969. The said appeal was heard by the High Court alongwith other appeals being First Appeals Nos. 136 of 1968 and 93 of 1970 as also suits being Suit Nos. 230 of 1965 and 319 of 1965. The appeals and the suits were heard together having regard to the common questions of law involved therein. By its judgment and decree the High Court was pleased to allow the said first appeal of the respondents, reversing the judgment and decree of the Trial Court and to dismiss the appellant's special suit. Hence this appeal by special leave. C D

Mr. S.K. Dholakia, the learned counsel for the appellant submits, *inter alia*, that the findings of the High Court are repugnant to the relevant provisions of the Act and/or the rules framed thereunder and/or the scheme, intendments and purposes thereof. It is contended that the appellant's product "Ashvagandhaarist" fell squarely within item 3(i) of the Schedule and as such wholly exempt from the payment of excise duty; that in view of the admitted position that until 1962 "Ashvagandhaarist" was exempt from the payment of excise duty as being a commodity falling under item No. 2(i) of the Schedule, simply by reason of the Explanation which was introduced in the Act by the Finance Act of 1962, as the explanation could never be considered to be or, in any event, in the scheme of the provision of the Act, was not a substantive provision of the Act and the explanation was not intended to and it did not seek to disturb the enumeration of the categories or the respective fields assigned to the various items of the schedule in existence prior thereto. It is submitted that item 3 of the amended Schedule was a specific item and enumerated categories of Ayurvedic medicinal preparations covered thereby and that being so, all commodities answering description set out therein fell within the E F G H

A ambit thereof and was excluded from the purview of the other items contained in the said schedule and that the express language of item 3(i), namely, of "Ayurvedic preparations containing self-generated alcohol which were not capable of being consumed as ordinary alcoholic beverages" were exempted and that the appellant's product "Ashvagandhaarist" was admittedly and obviously an Ayurvedic pre-
B paration containing self-generated alcohol which was not capable of being consumed as ordinary alcoholic beverage and as such it could not be made excisable on the ground that it fell within any other item of the schedule but it constituted residuary clause of the schedule in so far as the medicinal and toilet preparations containing alcohol were concerned. Counsel further submits that the expression "not otherwise specified" occurring in item 3 of the schedule did not restrict the scope
C of the enumerated categories under item 3 but was merely a marginal note showing that the said item 3 was residuary item and comprised of three sub-groups of commodities speficied therein; and that item No. 1 was not a specified item. Mr. Dholakia further submits that the interpretation that "ashvagandhaarist" fell within item No. 1 rendered
D the provisions of item No. 3 wholly nugatory inasmuch as if an Ayurvedic preparation containing self-generated alcohol but incapable of being used as ordinary alcoholic beverage, is treated as falling under item 1 there would be no Ayurvedic medicine which would factually fall under item 3 of the schedule and that the Explanation newly introduced by the Finance Act, 1962 could not add to, amend or
E alter or vary the classification of the goods existing prior thereto as covered by the various items of the said schedule; nor could it otherwise nullify or add to, amend or alter or vary the substantive provisions of the schedule and it could not be considered to be a substantive provision of the Act nor could it be allowed to abrogate the substantive provisions of the Act. In other words, the submission
F is that in view of the fact that the product of the appellant was exempt from payment of duty because the duty against item No. 3(i) in the amended Schedule of 1961 was mentioned to be 'nil' the High Court ought to have held that the said legal and factual position could not be transformed to the detriment of the appellant by shifting the said commodity from the field covered by item 3(i) to that covered by
G item 1 of the Act merely on the basis of the Explanation which was introduced by the Finance Act of 1962. Counsel argues that this was more so because "ashvagandhaarist" was not a name within the contemplation of the explanation but was merely a descriptive appellation of the medicine manufactured and sold by the appellant and it being a standard preparation according to the Ayurvedic system could be
H manufactured by any one conversant with the said system, and it did

not have a brand name in the hands of the appellant and the High Court's interpretation that a mere description is a name is inconsistent with the scheme of the definition of "patent and proprietary medicines" in the Explanation. This was the reason, it is argued, why Asavas and Aristhas were expressly made non-dutiable after 25.9.64 by subsequent amendment by the Government.

Mr. A.K. Ganguli, learned counsel appearing for the respondents, demurring, submits that there can be no doubt that "Asavas" and "Aristhas" fall under item 1 of the schedule to the Act as substituted by Finance Act 2 of 1962 and hence taxable at 10% ad valorem; and those being Ayurvedic preparations are specified preparations and they could never fall under item 3 or any part thereof which deals with medicinal preparations not otherwise specified containing alcohol. Item 1, Mr. Ganguli submits, specifically describes that medicinal and toilet preparation which has alcoholic contents and which alcohol comes to be present in those medicines by use of one of the two methods described in that item. First of such methods contemplates alcohol contents in the medicine which is prepared by distillation and the second method is addition of alcohol to the medicine. The medicinal preparation which is prepared by distillation and which contains alcohol and other medicinal preparations to which alcohol is added fall in category 1 and such medicines would cover medicinal preparations belonging either to Allopathic or Ayurvedic system or any other system of medicines. For every system of medicines, counsel argues, item No. 1 is not general item but it is a specific item in the sense it covers only those medicines which are prepared by distillation and contain alcohol and others to which alcohol has been added. According to counsel, such medicines belonging to any system whether indigenous or foreign are covered by item 1 and would be taxable as per that item and the disputed goods are undoubtedly medicinal preparations and they are also patent and proprietary medicines in view of the Explanation 1 and these Ayurvedic preparations are medicinal preparations being patent or proprietary medicines containing alcohol which are not capable of being consumed as alcoholic beverages and as such they squarely fall under item 1 of the Schedule, and the main Act and the Explanation is a self-contained provision which eliminates the reference either to Drugs Act or to the Rules made under the Act; and one has to read only the provision of the Schedule as a whole including the Explanation, and their meaning being simple and plain, they must be given their full effect.

A To appreciate the rival contentions we can appropriately refer to the provisions and the Schedule of the Act and the legislative changes thereof. The Act was meant to provide for the levy and collection of duty of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic. The statement of objects and reasons as notified in Gazette of India of 16.9.1954, Part B II, S. 2, Ext., page 596 said that by virtue of entry 40 in List II in the Seventh Schedule to the Government of India Act, 1935, medicinal and toilet preparations containing alcohol, etc., were subjected to Provincial excise duties. In order to secure uniformity the entry relating to excise duty on medicinal and toilet preparations containing alcohol, etc. were transferred under the Constitution from the State list to the Union List. The Act was intended to implement this pro- C vision in the Constitution and proposed uniform rates of excise duty and a uniform procedure for the collection thereof. The Act came in force on 1.4.57.

The Act in Section 2(a) defined "alcohol" to mean "ethyl D alcohol of any strength and purity having the chemical composition C_2H_5OH"; and it defined "medicinal preparation" in Section 2(g) to include "all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals". It did not define "drug". The E Drugs Act, 1940, as it was substituted by the Drugs (Amendment) Act, 1955 (16.4.55) had defined "drug" in Section 2(b) to include "(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals *other than* medicines and substances exclusively used or F prepared for use in accordance with the Ayurvedic or Unani systems of medicine; and (ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette."

G (Emphasis supplied)

Section 3(i) of the Act provides that "there shall be levied duties of excise, at the rates specified in the Schedule, on all dutiable goods manufactured in India."

H The original Schedule to the Act in 1955 read:

THE SCHEDULE

(See section 3)

Item No.	Description of dutiable goods.	Rate of duty.
1.	Medicinal and toilet preparations, containing alcohol, which are prepared by distillation or to which alcohol has been added, and which are capable of being consumed as ordinary alcoholic beverages.	Rupees seventeen and annas eight per gallon of the strength of London proof spirit.
2.	Medicinal and toilet preparations not otherwise specified containing alcohol	
	(i) Ayurvedic preparations containing self-generated alcohol, which are not capable of being consumed as ordinary alcoholic beverages.	Nil
	(ii) Ayurvedic preparations containing self-generated alcohol, which are capable of being consumed as ordinary alcoholic beverages.	Rupees three per gallon.
	(iii) All others.	Rupees five per gallon of the strength of London proof spirit
3.	Medical and toilet preparations, not containing alcohol, but containing opium, Indian hemp, or other narcotic drug or narcotic.	Nil

It would thus be clear that medicinal and toilet preparations were classified into those which were capable of being consumed as ordinary alcoholic beverages and those which were not capable of being consumed as ordinary alcoholic beverages. Again, medicinal and toilet preparations containing alcohol prepared by distillation or adding alcohol is differentiated from medicinal and toilet preparations 'not otherwise specified containing alcohol'. Further, under this 'not

otherwise specified' category Ayurvedic preparations have been classified into three groups, namely, Ayurvedic preparations containing self-generated alcohol not capable of being consumed as ordinary alcoholic beverages, those capable of being consumed as ordinary alcoholic beverages; and others. These three divisions were not drugs as defined in Drugs Act then. The first category of Ayurvedic preparations had not been subjected to duty while the other two categories had been.

Admittedly, under the above Schedule the product of the appellant 'ashvagandhaarist' was not dutiable which meant that it was included in item 2(i). It would also be clear that 'Ayurvedic preparations containing self-generated alcohol which were capable of being consumed as ordinary alcoholic beverages' were dutiable at the rate of Rupees 3 per gallon and the third category of others was also dutiable at the rate of Rupees 5 per gallon on the strength of London proof spirit. Alcohol and self-generated alcohol were treated differently.

The Schedule was amended by the Amending Act No. 19 of 1961 and the amended Schedule stood as follows:

Item No.	Description of dutiable goods	Rate of duty
1.	Medicinal preparations, being patent or proprietary medicines, containing alcohol and which are not capable of being consumed as ordinary alcoholic beverages.	Ten per cent ad valorem.
2.	Medicinal preparations, containing alcohol, which are prepared by distillation or to which alcohol has been added, and which are capable of being consumed as ordinary alcoholic beverages.	Rupees three and eighty five naye paise per litre of the strength of London proof spirit.
3.	Medicinal preparations not otherwise specified containing alcohol-	
	(i) Ayurvedic preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages.	Nil

(ii) Ayurvedic preparations, containing self-generated alcohol, which are capable of being consumed as ordinary alcoholic beverages.	Thirty eight naye paise per litre.
(iii) All others.	Rupee one and ten naye paise per litre of the strength of London proof spirit.

Explanation I: "Patent or proprietary medicines" has the same meaning as in clause (h) of Section 3 of the Drugs Act, 1940 (23 of 1940).

The statement of objects and reasons of the Amendment Bill, as published in Gazette of India, 8.3.1961, Pt. II, S. 2, Ext., page 106, said:

> "Consequent on the decision to adopt metric units from the 1st April, 1961, in the sale of alcohol and collection of duty thereon, it is proposed to provide for the levy and collection of excise duty on medicinal and toilet preparations in terms of metric units.
>
> .....
>
> Under existing item 2(ii) of the Schedule to the Act, Ayurvedic preparations containing self-generated alcohol which are capable of being consumed as ordinary alcoholic beverages are subjected to duty at the rate of Rs.3 per gallon. However, by virtue of the provision contained in section 19(2)(xix) of the Act, read with Rule 8 of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956, the rate of duty with respect to such preparations has been reduced to Rs.1.75 per gallon with effect from the 10th September, 1960, and it is this reduced rate that is, proposed to be expressed in terms of metric units in the Bill."

It would thus be clear that the main purpose was the levy and collection of excise duty on medicinal and toilet preparations in terms of metric unit. while there was reference to them existing item 2(ii) of the Schedule of the Act, namely, Ayurvedic preparations containing

A self-generated alcohol which were capable of being consumed as ordinary alcoholic beverages the duty whereof was reduced to Rs. 1.75 per gallon from Rs.3 per gallon, there was no mention that item No. 2(i) of the Schedule, namely, Ayurvedic preparations containing self-generated alcohol which were not capable of being consumed as ordinary alcoholic beverages was subjected to tax. The statement of object and B reasons was silent about item No. 2(i).

In the amended Schedule we find that item 1 for the first time mentioned medicinal preparations being patent or proprietary medicines, containing alcohol and which are not capable of being consumed as ordinary alcoholic beverages and the earlier item No. 1 has C been re-numbered as item No. 2 and the earlier item No. 2(i), (ii) and (iii) remained as they were as 3(i), 3(ii) and 3(iii). As regards levy of duty item 2(i) of the old Schedule was kept duty free in item 3(i) of the Schedule. Thus, there has been no fresh charging of duty on what was 2(i) and is now 3(i) under which category the appellant's product 'ashvagandhaarist' was exempted from duty before the amendment of the D Schedule. There is, therefore, no doubt that item 1 & 2(i) remained mutually exclusive or in other words, they would not be overlapping. Item 1 in the amended Schedule deals with medicinal preparations being patent or proprietary medicines and not medicinal preparations 'not otherwise specified.'

E The Explanation I says that patent or proprietary medicines has the same meaning as in clause (h) of Section 3 of the Drugs Act, 1940. The High Court has found that re-numbered definition 3(h) was earlier 3(d) and read as follows:

> "3(d) 'Patent or proprietary medicine' means a drug which F is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the Permanent Commission on Biological Standardisation of the Wrold Health Organisation or in the latest edition of the British Pharmacopoeia or the British Pharmaceutical Codex or any other Pharmacopoeia G authorised in this behalf by the Central Government after consultation with the Board."

Thus, patent or proprietary medicines meant a drug which was defined in the Drugs Act and not in the Act. The High Court rightly held that Ayurvedic medicine was not a drug at all. The definition of drug expreH ssly excluded them. So the definition of patent or proprietary medicine

was exclusive of Ayurvedic medicinal preparations, those being excluded from the definition of drug. The definition of patent and proprietary medicines till then did not apply to Ayurvedic preparations. This position continued indeed till the amendment of Drugs Act by the Drugs and Cosmetics (Amendment) Act, 1964. Several amendments were effected by that Amendment Act of 1964. Section 33A and Chapter IVA were inserted. Section 33A said that Chapter IV was not to apply to Ayurvedic (including Siddha) or Unani drugs. "Save as otherwise provided in this Act, nothing contained in this Chapter shall apply to Ayurvedic (including Siddha) or Unani drugs". Chapter IVA made provisions relating to Ayurvedic (including Siddha) and Unani drugs. This shows that prior to this amendment of 1964 Ayurvedic preparations were expressly not drugs under the Drugs Act.

The Drugs and Cosmetics Act in the amendment First Schedule after the amendment Act of 1964 included Ayurvedic (including Siddha) and Unani system drugs prepared under Section 3(a) which contains the definition: "Ayurvedic (including Siddha) or Unani drugs includes all medicines intended for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings and animals, mentioned and process and manufacture exclusively in accordance with the formula prescribed in the authoritative book on Ayurvedic (Siddha) Unani system of medicines specified in the first schedule." This definition was also inserted by Drugs and Cosmetics (Amendment) Act, 1964 (13 of 1964) Section 2(a)(i) with effect from 15.9.1964.

The same exclusion remained in the related Central Acts. For example, the Drugs Control Act, 1950 (Act 26 of 1950) replaced the Drugs Control Ordinance, 1949 (6 of 1949) which was promulgated on 3.10.1949 in order to ensure that certain essential imported drugs and medicines were sold in the reasonable price in the Chief Commissioner's provinces. Similar ordinances were issued by all the provinces. The necessity for continuing price control of these essential drugs continued. That was an Act to provide for the control of sale, supply and distribution of drugs. Drug meant any drug as defined in clause (b) of Section 3 of Drugs Act, 1940, in respect of which a declaration had been made under Section 3 which defined drug. It may be noted that Pharmacopoeia authorised for the purpose of Section 3(h) of the Drugs Act, 1940, were: The Indian Pharmacopoeia, the Pharmacopoeia of the United States, the National formulary of the United States, the International Pharmacopoeia and the State Pharmacopoeia

A of the Union of Soviet Socialist Republics, vide S.O. 701 Gazette of India, 1961, Pt. II, S. 3(ii), p. 725. There was thus no Ayurvedic Pharmacopoeia prescribed for the purpose of that Act. Pharmacopoeia is a book containing the list of drugs with directions for use. The fact that no Ayurvedic Pharmacopoeia had been notified at the relevant time was because Ayurvedic preparations were not drugs for B the purpose of Drugs Act and, for that matter, of Medicinal and Toilet Preparations (Excise Duties) Act, at the relevant time. It could be for this reason that in the original Schedule the expression medicinal and toilet preparations 'not otherwise specified' was used and Ayurvedic preparations of different categories were put under item 2. In the Schedule as amended by the 1962 Act, this expression continued in item 3. The same definition of 'drug' also continued in the Drugs Act.
C

From the Explanation I of the Schedule of the Act as substituted by Act 5 of 1964 also it is clear that patent or proprietary medicine means any medicinal preparation which is not specified in a monograph in a Pharmacopoeia, Formulary or other publications notified in D this behalf by the Central Government in the Official Gazette.

To be a patent medicine one would be required to have a patent. A patented article means an article in respect of which a patent is in force. "Patent" means a patent granted under the Indian Patent and Designs Act, 1911, and now the Patent Act, 1970. A patent medicine E will, therefore, mean medicine in respect of which a patent is in force. "Proprietary" means of a proprietor, that is, holding proprietary rights. Patent means a grant of some privilege, property, or authority, made by the Government or sovereign of a country to one or more individuals. A proprietor is one who has the legal right or exclusive title to anything. It is synonymous with owner. A person entitled to a F trade mark or a design under the acts for the registration or patenting of trade mark or design is called a proprietor of the trade mark or design. Under the Trade and Merchandise Marks Act, 1958, "trade mark" means:

> "(i) in relation to Chapter X (other than section 81), a G registrered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and
>
> (ii) in relation to the other provisions of this Act, a mark H used or proposed to be used in relation to goods for the

purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provisions of Chap. VIII."

As defined in s. 2(a), registered proprietor in relation to a trade-mark means a person for a time being entered in the register as proprietor of the trade-mark. A registered trade-mark means a trade-mark which is actually on the register.

By s. 18 of the Finance (No. 2) Act, 1962, the Schedule to the Act was further amended substituting the Explanation 1 by the following:

"Explanation 1: "Patent or proprietary medicines" means any medicinal preparation which bears either on itself or on its container or both a name which is not specified in a monograph in a Pharmacopoeia, Formulary or other Publications notified in this behalf by the Centri Government in the Official Gazette, or which is a brand name, that is a name or a registered trade mark under the Trade and Merchandise Mark Act, 1958 (43 of 1958), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicinal preparation for the purpose of indicating or so as to indicate a connection in the course of trade between as preparation and some person having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person."

This amendment of the Explanation came into force in June, 1962 with retrospective effect from 23rd April, 1962.

The Director of Prohibition and Excise, for Maharashtra State, Bombay, thereafter issued the circular dated 31.5.1962 (Ext. 44). It said that the patent or proprietary medicines as defined in clause (d) of s. 3 of the Drugs Act of 1940 (23 of 1940) and falling under items No. 1 and No. 4 of the Act as substituted by the Amendment Act, 1961 were, prior to 23rd April, 1962, subject to levy of duty at 10 per cent *ad*

A *valorem* by virtue of the Explanation 1 below the Schedule to the Act which has now been deleted from 23rd April, 1962. According to new definition of 'Patent and Proprietary Medicines' as given in the new Explanation as amended by Finance (No. 2) Act, 1962 medicinal preparations containing alcohol, opium, Indian hemp or other narcotic drugs or narcotic falling under item 3(i), 3(iii) and 3(v) of the said B Schedule, were with effect from 23rd April, 1962 liable to duty not under the said items but under item No. 1 or item No. 4 of the said Schedule at 10 per cent *ad valorem*, if such preparations are "patent or proprietary medicines" as defined in the Explanation. Excise duty on all 'patent or proprietary medicinal preparations' (Alopathic, Ayurvedic, Unani and Homoeopathic preparations) containing alcohol, C opium, Indian hemp or other narcotic drug or narcotic, which fall within the purview of the new definition of 'patent or proprietary medicines' given in the Explanation, should therefore, be recovered at the rate of 10 per cent *ad valorem* from the holders of the licences granted under the said Act and the rules thereunder in accordance with the instructions contained in their Circular No. DQ 64-31/61 D dated 22nd July, 1961. A note received from the Government of India, explaining the scope of the new definition of 'patent or proprietary medicines' was also enclosed along with the circular.

It is in evidence in the instant case that two bottles containing Asavas were produced in the Court as Exhibit 42/1 and Exhibit 42/2. E Both the bottles contained the same kind of Asavas. The ingredients of the two were the same and the preparation of the two was also the same. When the Asavas were sold during the period beginning from June, 1962 to February, 1964, no excise duty was levied because on the label there was no trade mark of patent and proprietary right printed. If the Asavas were sold in the bottle having a label with no trade mark F as at Exhibit 42/1, no duty was recovered from the plaintiff. These Asavas were supplied to Employees' State Insurance as per their tender without the trade mark on the label to see that the plaintiff-company were not taxed the excise duty which would have been charged had they put the patent mark on the label. But in order to fight for blemish of cheating, the plaintiff thought it necessary to have G the trade mark on such bottles without any difference. As soon as the goods were sought to be sold in the above manner the excise duty was levied and was sought to be recovered from the plaintiff's fund. No excise duty was recovered after February, 1964 even though Asavas were sold with their trade mark. It is also in evidence that there were two sub-groups in the group of Asavas and Aristhas known as H 'restricted' and 'unrestricted'. Restricted means preparations which

could be used as alcoholic beverages. In this case the period from 26.7.62 to 29.2.64 is alone material inasmuch as by the Finance Act of 1964 with reference to item No. 1, the Ayurvedic and Unani medicines containing self-generated alcohol and which were not capable of being consumed as ordinary alcoholic beverages were exempted from the levy of excise duty. In other words, the position prior to Finance Act of 1962 was continued and thereafter the medicinal preparations, namely, Asavas and Aristhas ceased to be taxed from 1964.

It would be noted that the Explanation itself did not specifically mention "Allopathic, Ayurvedic, Unani and Homoeopathic preparations" as was done in the Director's Circular. On a comparison of the earlier Explanation and the substituted Explanation one would notice that earlier "patent and proprietary medicines" meant a drug. In the substituted Explanation it means any medicinal preparation. However, it can not be lost sight of that the words "medicinal preparation" as continued to be defined in s. 2(g) of the Act "includes all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in treatment, mitigation or prevention of diseases in human beings or animals." We have already noticed that the Drugs Act continued to exclude Ayurvedic preparations till its amendment in 1964. It has been stated that even after amendment of the Schedule after 1961 amendment the appellant's product was exempted from duty, till the Director's Circular disturbed the position.

This brings us to the question of interpretation of the Act and the Schedule with the Explanation, in view of the submission that the Explanation could not have rendered item 3(i) of the Schedule redundant. Was there any change of intention of the Legislature in this regard?

A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition, Vol. 36, para 551: "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced." The schedule may be used in construing provisions in the

A body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the schedule and the enactment the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act.

B Lord Sterndale, in *Inland Revenue Commissioners* v. *Gittus,* [1920] 1 K.B. 563, said:

> "It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule
> C is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is *prima facie* at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can satisfy the language of the section without extending it beyond that purpose you
> D ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is *prima facie* to be used.
> E You cannot refuse to give effect to clear words simply because *prima facie* they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

The above observation was not disapproved in appeal (1921) 2
F A.C. 81. However, the basic principle is that in case of a conflict between the body of the Act and the Schedule, the former prevails. In the instant case we do not find any such conflict.

An Explanation, as was found in *Bihta Marketing Union* v. *Bank of Bihar,* AIR 1967 SC 389: (1967) 1 SCR 848, may only explain and
G may not expand or add to the scope of the original section. In *State of Bombay* v. *United Motors,* AIR 1953 SC 252: (1953) SCR 1069,it was found that an Explanation could introduce, a finction or settle a matter of controversy. Explanation may not be made to operate as "exception" or "proviso". The construction of an Explanation, as was held in *Collector of Customs* v. *G. Dass & Co.,* AIR 1966 SC 1577, must
H depend upon its terms and no theory of its purpose can be entertained

unless it is to be inferred from the language used. It was said in *Burmah Shell Oil Ltd.* v. *Commercial Tax Officer,* AIR 1961 SC 315: (1961) 1 SCR 902, that the explanation was meant to explain the Article and must be interpreted according to its own tenor and it was an error to explain the Explanation with the aid of the Article to which it was annexed. We have to remember what was held in *Dattatraya Govind Mahajan* v. *State of Maharashtra,* AIR 1977 SC 915 (928): (1977) 2 SCR 790, that mere description of a certain provision, such as "Explanation" is not decisive of its true meaning. It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it, but ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention. *State of Bombay* v. *United Motors,* (supra) laid down that the interpretation must obviously depend upon the words used therein, but this must be borne in mind that when the provision is capable of two interpretations, that should be adopted which fits the description. An explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself. In *Hiralal Ratanlal* v. *State of U.P.,* [1973] 1 SCC 216 (225), it was ruled that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation. In all these matters courts have to find out the true intention of the Legislature. In *D.G. Mahajan* v. *State of Maharashtra,* (supra) xx this Court said that legislature has different ways of expressing itself and in the last analysis the words used alone are repository of legislative intent and that if necessary an Explanation must be construed according to its plain language and 'not on any a priori consideration'.

Applying the above principles we do not find any difference between the Schedule and the Explanation I; the latter has not amended the Schedule by either deleting item 3(i) or by adding or including Ayurvedic preparations in item 1. No change of legislative intent is indicated.

In the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 Section C Medicinal and Toilet preparations, Allopathic preparations, Homoeopathic preparations and Ayurvedic preparations are dealt with separately. So far as Ayurvedic preparations are concerned,

A Rule 64 dealing with types of preparations said: "Asavas and Aristhas are the principal types of Ayurvedic preparations in which alcoholic content is self-generated and not added as such." Rule 65 on Pharmacopoeia for Ayurvedic preparations said: "Until a standard Ayurvedic pharmacopoeia has been evolved by the Central Government, the pharmacopoeias that are in vogue in the various States shall B be recognised as standard Ayurvedic pharmacopoeias." Rule 66 classified the preparations containing self-generated alcohol for purposes of levy of duty. It said: "No duty shall be levied on Ayurvedic preparations containing self-generated alcohol in which the alcohol content does not exceed 2 per cent. Where the percentage of proof spirit is in excess of 2 per cent, duty will be leviable under item 2(ii) or 2(i) of the C Schedule to Act the according as the preparations are capable of being consumed as ordinary alcoholic beverage or not." Thus Ayurvedic preparations containing self-generated alcohol which are not capable of being used as alcoholic beverages fall under original 2(i) and now 3(i).

D The above Rules, which have not been shown to have been amended clearly say that where the percentage of proof spirit is in excess of 2% the preparation would be dutiable under item 2 which became item No. 3 in the amended Schedule. This Rule is consistent with the Schedule but is wholly inconsistent with the Director's circular.

E

Mr. Ganguli relies on (1971) 2 SCR 590: (1971) 1 SCC 4 *Baidyanath Ayurved Bhawan Pvt. Ltd.* v. *The Excise Commissioner of U.P.*, The question there was whether medicinal preparation containing tincture, spirit etc. was dutiable. The tincture and spirit in their turn contained alcohol. It was contended that alcohol was not directly F added but was component of the tincture or spirit. It was, however conceded that the preparations were medicinal preparations and that tincture was a component of that preparation and alcohol was a component of tincture. Therefore, this Court held that it was difficult to see how it could be urged that the preparation did not contain alcohol. All that the plain language of the provision required was that the G preparation should contain alcohol. The question whether Ayurvedic preparation was a drug to be included in the definition of medicinal preparation was not involved. Whether self-generated alcohol was to be treated differently was also not there.

In *Mohanlal Maganlal Bhavsar* v. *Union of India,* [1986] 1 SCC H 122 it was held that before a medicinal preparation can fall under Item

1 of the Schedule three conditions are required to be satisfied: (1) the preparation must ba a patent or proprietary medicine; (2) it must contain alcohol; and (3) it must not be capable of being consumed as an ordinary alcoholic beverage. The fact that ointments and liniments were medicinal preparations containing alcohol in semi-liquid form did not make any difference. However it was not in dispute that the articles were medicinal preparations for the purposes of the Act and that they were patent and proprietary medicines. In the instant case the question is whether Ayurvedic preparations, in view of the definition of medicinal preparations in the Act, could be regarded as drugs and could be dutiable under Item 3 and not Item 1. In *Commissioner of Sales Tax* v. *The Modi Sugar Mills Ltd.*, [1961] 2 SCR 189 it was held that a taxing statute must be interpreted in the light of what is clearly expressed therein and nothing can be implied nor can provisions be imported into them so as to supply an assumed deficiency. In *Baidyanath Ayurved Bhawan* (supra) this Court quoted the observation of Rowlatt, J. in *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue*, [1921] 1 K.B. 64 that "in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." The question in the instant case, however, is whether the appellant's product being an Ayurvedic preparation could be a drug for being included in the definition of medicinal preparation for the purpose of the Act. This question was not raised in the above cases.

As Mr. Dholakia points out, the Circular would render item 3(i) of the Schedule wholly redundant. It has been the consistent policy of legislature to exempt item 3(i) hitherto 2(i), from duty. The legislature has not in any way changed it. The Explanation has not in any way altered the classification in the Schedule. The substituted Explanation no doubt stressed on patents and trade marks. But it has not expressly envisaged in item I, patented trade marked Ayurvedic preparations contrary to the classification in the Schedule. *Ex praecedentibus et consequentibus optima fit interpretatio*. The best interpretation is made from the context. *Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare Vel respondere.* It is unjust to decide or respond as to any particular part of a law without examining the whole of the law. *Interpretare et concordare leges legibus, est optimus interpretendi modus.* To interpret and in such a way as to harmonize laws with laws, is the best mode of interpretation. In the instant case the Director's Circular is not in harmony with item 3(i) or with the classifi-

A cation of Ayurvedic preparations in separate item 3. It would bot be in conformity with definition of 'medicinal preparation' in s. 2(g) of the Act. *Jura eodem modo distituentur quo constituuntur.* Laws are abrogated by the same means (authority) by which they are made. The Director's Circular is not shown to have been a piece of delegated B legislation. The Explanation on its tenor does not amend the Schedule. No part of a Statute is to be taken as superfluous or redundant. Every word in a Statute is to be given a meaning. A construction which would leave without effect any part of the language of a statute will normally be rejected. Every clause of a statute is to be construed with reference to the context and other clauses of the Act so as to make, as far as possible, a consistent enactment of the whole C Statute.

The High Court accepted the submission that it provided a self-contained definition of 'patent and proprietary medicines' for the purpose of the main Act and severed the connection between the D provisions of the Drugs Act as was contemplated in earlier Explanation I, and consequently one need not look to the Drugs Act at all for its interpretation and the Schedule was thence to be interpreted as it existed along with that self-containing definition in Explanation I. In doing so, the position that "Patent and Proprietary medicines" means "any medicinal preparation" which very "Medicinal preparation" includes all drugs which are a remedy or prescription etc. as defined in E s. 2(g) of the Act. So a reference to the Drugs Act was still necessary. No doubt this is an inclusive definition. To enlarge its denotation a specific provision to include Ayurvedic preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages was necessary. That having not been done by the Explanation itself, it was not permissible to include it by the F Circular. The Explanation I could not have been in conflict with the provisions of the Act and the Circular could not have been in conflict with the Explanation, the Schedule, the Rules and the Act.

In the result, we set aside the judgment and decree of the High Court and restore those of the Civil Judge decreeing the suit. We leave G the parties to bear their own costs.

Y.Lal Appeal allowed.