1974 *Present :* **Wijayatilake, J., Walgampaya, J., and Sirimane, J.**

SOHLI EDULJEE CAPTAIN (Secco Brushes Corporation), Appellant, *and* COMMISSIONER OF INLAND REVENUE, Respondent

S.C. 2/73—Income Tax Case BRA/BTT/3

Income tax—Finance Act No. 11 of 1963—Section 119—Order made thereunder by Minister on 2nd September 1969—Tooth brushes not taxable under Part VIII of the Schedule—Meaning and effect of words "toilet requisites"—Interpretation of statutes—Scope of ejusdem generis *rule of construction—Taxing statute—Requirement of unambiguous language.*

A tooth brush is not an expendable substance and, therefore, is not an article falling within the meaning of the words "cosmetics, perfumes, hair-dressing and toilet requisites (excluding soap, hair oil and tooth powder)", in Part VIII of the Schedule in the Order made under Section 119 of the Finance Act No. 11 of 1963 and published in the Government Gazette No. 14,864/9 dated 2nd September, 1969.

Scope of *ejusdem generis* rule of construction in interpreting statutes discussed.

Express and unambiguous language is indispensable in a statute passed for the purpose of imposing a tax. In a Taxing Statute, if two constructions are possible, one in favour of the assessee and the other in favour of the assessor, the Court must adopt the construction which is favourable to the assessee.

CASE stated by the Income Tax Board of Review for the opinion of the Supreme Court.

S. Ambalavanar, with *C. Pathmanathan, W. H. Perera, P. Dominic* and *D. A. N. Jayamaha,* for the assessee-appellant.

S. Sivarasa, Senior State Counsel, for the Attorney-General.

Cur. adv. vult.

May 23, 1974. WIJAYATILAKE, J.—

A question of law on which the opinion of the Supreme Court is sought is :

> Whether a tooth brush is an article coming within the meaning of the words "cosmetics, perfumes, hair-dressing and toilet requisites (excluding soap, hair oil and tooth powder)", in Part VIII of the Schedule in the Order made under Section 119 of the Finance Act No. 11 of 1963 and published in the Ceylon Government Gazette No. 14,864/9 dated 2.9.69. The assessee paid tax at 5 per cent. The assessor made an additional assessment of 15 per cent. on the ground that the manufacture of tooth brushes came within Part VIII of the Schedule of the said Order. The amount of tax in dispute is Rs. 153,012 (excluding penalty).

The members of the Board of Appeal, by their order dated 16.9.72, held that tooth brushes were taxable under Part VIII of the Schedule, as—

(*a*) tooth brushes are toilet requisites,

(*b*) the toilet requisites which are excluded from Part VIII and expressly mentioned and the exceptions mentioned do not include tooth brushes,

(*c*) the principal characteristic common to "cosmetics, perfumes, hair-dressing" is that these are used to enhance personal appearance,

(*d*) 'toilet requisites' in Part VIII of the Schedule would include tooth brushes even if the *eiusdem generis* rule of construction is followed.

The Board, in giving their reasons, observed that the articles referred to are familiar items of daily use in the process of dressing and grooming and they do not agree that the term 'toilet requisites' must necessarily be given a very wide connotation; although a general term, it means things which are used for the enhancement of one's appearance. It certainly does not mean to refer to everything that is found in a bath room, for that would be to confuse 'toilet requisites' with 'toilet fittings' (in which expression the word 'toilet' is used in a secondary and unusual sense). The *eiusdem generis* rule is not a rule of construction which must be applied in every case where specific words are followed by general words. The general words must be given their ordinary meaning, unless the context in which the words are used show that the general words were intended to have only a restricted meaning. Soap, hair oil, tooth powder are expressly excluded, but not tooth paste and tooth brushes. The items excluded are undoubtedly toilet requisites. The order expressly declares the items to be excluded from Part VIII. It is implicit that toilet requisites which do not come within the exception are liable to be charged under Part VIII.

The Board proceeds to observe that since both the Commissioner in his finding and the Assessor who appeared before the Board agreed with Counsel for the Assessee that 'toilet requisites' is a wide expression which was narrowed down by the *eiusdem generis rule,* they would proceed to consider the application of that rule to the clause in question. Where the Commissioner and the Assessor differed from learned Counsel is in the selection of characteristics or quality in the specific items which would narrow the scope of the general words 'toilet requisites'. The Board is unable to agree with the submission of

learned Counsel for the Assessee that the words 'toilet requisites' will not include tooth brushes on the *eiusdem generis* rule, as the specific items listed are expendable substances. For the purpose of the *eiusdem generis* rule, the Board states that they should not look for a trivial or strained characteristic in the group. They must ask what is the common and dominant feature which the specific things possessed. In their opinion, this clearly lies in their use for personal appearance. For instance. the words 'hair-dressing' would include hair cream or hair lotion which are expended by use, and also articles like hair pins, hair nets and hair brushes which are not expended by use. Therefore, the Board has come to the conclusion that the words 'toilet requisites' cannot be restricted to mean only articles that are expended.

Mr. Ambalavanar, Counsel for the Appellant, has drawn our attention to a series of cases dealing with the interpretation of Taxing Statutes. It has been held that express and unambiguous language is absolutely indispensable in Statutes passed for the purpose of imposing a tax, for such a Statute is always strictly construed. In a Taxing Statute, therefore, if two constructions are possible, one in favour of the assessee and the other in favour of the assessor, the Court must adopt the construction which is favourable to the assessee—vide *Mohamed v. Commissioner of Inland Revenue*[1], 64 N.L.R. p. 400 at 403 ; *Commissioner of Inland Revenue v. Crusz Raj Chandra*[2], 67 N.L.R. p. 174 at 182. In the case of *Bladnoch Distillery Co. Ltd.*[3] (1948) 1 All England Reports, p. 616 at 625, Lord Thankerton observed as follows : "I cannot think that there can be much doubt as to the proper canons of construction of this Taxing Section. It is not a penal provision ; Counsel are apt to use the adjective 'penal' in describing the harsh consequences of a taxing provision, but, if the meaning of the provision is reasonably clear, the Courts have no jurisdiction to mitigate such harshness. On the other hand, if the provision is reasonably capable of two alternative meanings the Courts will prefer the meaning more favourable to the subject. If the provision is so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect." In the case of *The Commissioner of Income Tax, Bombay City v. Provident Investment Co. Ltd.*,[4] 32 (1957) Income Tax Reports, p. 190 at 191, the Supreme Court held that if the Revenue satisfies the Court that a case falls strictly within the provisions of the law, then the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the Taxing Statute, no tax can be imposed by inference or

[1] *64 N.L.R. at 403.*
[2] *67 N.L.R. at 182.*
[3] *(1948) 1 A.E.R. at 625.*
[4] *32 Income Tax Reports at 191.*

analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter— see also *Commissioner of Income Tax, Madras v. Bossato Brothers Ltd.*[1] 8 (1940) Income Tax Reports, p. 41 at 48. Mr. Ambalavanar has also drawn our attention to the Ceylon Government Gazette Extraordinary No. 14,820/4 of 26.9.68 and 14,864/9 of 2.8.69.

In regard to the question as to whether the *eiusdem generis* rule applies to the facts before us, both Mr. Ambalavanar and Mr. Sivarasa have referred us to *Maxwell on the Interpretation of Statutes*, 12th Edition, pp. 297 to 305. I might sum up the relevant principles set out therein: " In the abstract, general words, like all others, receive their full and natural meaning, and the Courts will not impose on them limitations not called for by the sense or objects of the Enactment. But the general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. For, according to a well established rule, in the construction of Statutes, general terms following particular ones apply only to such persons or things as are *eiusdem generis* with those comprehended in the language of the Legislature. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended as where there is a provision specifically excepting certain classes clearly not within the suggested genus..... The rule applies only to general words *following* words which are less general. Unless there is a genus or class or category, there is no room for any application of the *eiusdem generis* doctrine. In a modern Privy Council case it has been said that there must be more than one species mentioned to constitute a genus; but the authority on this is very slight and there are many instances of the rule being applied to two-word phrases. The rule of *eiusdem generis* may apply despite the absence of the word 'other' at the end of the list of things specified. The *eiusdem generis* doctrine is by no means an absolute one, and if it can be seen from a wider inspection of the scope of the legislation that the general words ought to be construed generally, they are so construed notwithstanding that they follow more particular expressions. The wording of the Statute may also show that the general language is to be construed generally."

In regard to the applicability of the *eiusdem generis* rule, Mr. Sivarasa, learned Senior State Counsel, has relied on the

[1] *8 Income Tax Reports at 48.*

following cases: *Anderson v. Anderson*[1] (1895) 1 Q.B.D. 749, where it was held that when, in the operative part of a deed, general words follow an enumeration of particular things, those words are prima facie to be construed as having their natural and larger meaning, and are not to be restricted to things *eiusdem generis* with those previously enumerated, unless there is something in the deed which shows an intention so to restrict them. In *National Association of Local Government Officers v. Bolton Corporation*[2] 1943 A.C. p. 166 at 176, it was held that the use of the words 'or otherwise' does not bring into play the *eiusdem generis* principle, for 'manual labour' and 'clerical work' do not belong to a single limited genus. In *Alan v. Emmerson*[3] (1944) 1 A.E.R. p. 344 at 347, Asquith J. observed that: " words excepting a species from a genus are meaningless unless the species in question prima facie falls within the genus; and that no case was cited in which a genus has been held to be constituted not by the enumeration of a number of classes followed by the words 'or other', but by the mention of a single class (in this case 'theatre') followed by those words; and that the tendency of the more modern authorities is to attenuate the application of the *eiusdem generis* rule—see *Anderson v. Anderson*. In *Chandris v. Isbrandtsen-Moller Co.* (1950), 1 A.E.R. 768, Devlin J. adopted the principle in *Anderson v. Anderson*—see also *Rands v. Oldroyd*, 1 Q.B.D. p. 204 at 212.

Mr. Ambalavanar has very strenuously submitted that on a reading of the regulation in question it is quite clear that the words 'toilet requisites' have to be given a restrictive interpretation. Even the Board of Appeal has held that these words should not be given too wide an interpretation. As far as I could see, on a reading of the order made by the Board, inferentially they have adopted the *eiusdem generis* rule with certain limitations. For instance, they observe that these words certainly do not mean to refer to everything that is found in a bath room, for that would be to confuse 'toilet requisites' with 'toilet fittings' (in which expression the word 'toilet' is used in a secondary and unusual sense). However, the question does arise, if only the words 'toilet requisites' appeared in this regulation, whether they would not include articles such as mirrors, commodes, bidets, wash basins, bath tubs and other devices which certainly are necessary for personal hygiene and the enhancement of one's appearance. As for the meaning of the words 'toilet requisites', according to the Oxford Dictionary, a 'requisite' is something needed for accomplishment of some purpose. So that 'toilet requisites' are something needed for accomplishment of one's toilet. I do not think we can confine

[1] *(1895) 1 Q.B.D. 749.* [2] *(1943) A.C. at 176.*
[3] *(1944) 1 A.E.R. at 347.*

'toilet' only to the process of beautifying the face and dressing the hair; it is something much more elaborate and we have to keep the whole body in mind. Therefore, even articles such as the ones I have mentioned above would come within the expression 'toilet requisites'. In this context I might refer to a fascinating article by Justice L. W. de Silva on "*Roman women —paint, powder and perfume*" in PALMA—journal of the Classical Association of Ceylon (1972), page 78, where, on the authority of Roman and Greek poets, he has given a peep into the part played by cosmetics in Rome and Greece. "The word *cosmeta* in Roman times meant the valet or *femme de chambre* who had charge of the wardrobe and ornamentation of the lady". One must not forget the mere male who also has to rely on certain 'toilet requisites' to make himself presentable. Thus, it is quite evident that this expression *by itself* has to be given a wide interpretation. The question arises whether in the context in which it appears the *eiusdem generis* doctrine applies.

In my view, the reasons given by the Board add to the weight of the argument advanced by Mr. Ambalavanar that this doctrine does apply in the instant case as the words in question have to be given a restrictive interpretation. I might mention that even the Deputy Commissioner, who heard the appeal, was of the same view. The Board has proceeded to hold that even if this rule applies they must not look for a trivial or strained characteristic in the group and they must ask what is the common and dominant feature which the specific things possess. In their opinion, this clearly lies in their use for personal appearance. So that the words 'toilet requisites' would include both articles that are expended by use and also articles not expended by use, like pins, hair nets and hair brushes. In this context, if we study the wording of this regulation minutely, it would appear that the articles which have been excluded, namely, soap, hair oil and tooth powder, give us a clue to a correct interpretation. Mr. Sivarasa has very cogently stressed that the exclusion of tooth powder points to the fact that tooth paste has to be included, and, if tooth paste has to be included, it follows that tooth brushes too fall into the same category as the two go together. However, in my opinion, the particular articles which are excluded indicate that the Legislature had in mind the common man. Mr. Sivarasa concedes this. If the words 'toilet requisites' covered such articles as hair pins, hair nets and tooth brushes *and combs*, why in the interests of the common man was the common comb not excluded ? It is very unlikely that this would have escaped the attention of the draftsman. As it strikes me, the exclusion of the comb was not necessary because the words 'toilet requisites' did not include articles of that category. So that there appears to be considerable force in the

submission made by Mr. Ambalavanar that the words 'toilet requisites' do not include tooth brushes as the items which precede these words, and the items which have been excluded, are clearly *expendable* substances. I do not think there is much weight in the submission that tooth paste (which is included) would be of little avail without a tooth brush, as we know that a tooth brush can be used effectively even without tooth paste. I am not inclined to agree that a tooth brush as such is a luxury article in the toilet, although 'tooth paste' may perhaps be so recognized. Nor am I inclined to treat a tooth brush as an expendable article as the bristles wear away. As I have already observed, what has impressed me very favourably in coming to a conclusion on this matter is the fact that the common comb has not been excluded from this regulation. Even if there is a doubt in regard to the interpretation, it should be resolved in favour of the assessee.

I would accordingly hold that a tooth brush is not an article which falls within the scope of this regulation.

The appellant will be entitled to costs of these proceedings which I fix at Rs. 500.

WALGAMPAYA, J.—I agree.

SIRIMANE, J.—I agree.

Appeal allowed.