
(1978) 01 MAD CK 0001

In the Madras High Court

Case No : T.C. No's. 318 to 321 of 1975, Appeal No's. 18 to 21 of 1975

A. Boake Roberts and Co. (India) Ltd.

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 06-01-1978

Acts Referred:

General Sales Tax Act, 1125 — Entry 48 Schedule 1

Citation : (1978) 7 CTR 246(2)

Hon'ble Judges : P. Govindan Nair, C.J

Bench : Single Bench

Judgement

P. Govindan Nair, C.J.—The appeals raise a common question. They relate to the same assessee. The years of assessment are respectively

1964-65, 1968-69, 1965-66 and 1967-68. The question turns on the interpretation to be placed on item 51 in Schedule I of the Madras General

Sales Tax, 1959 as it stood at the relevant time pertaining to the assessment years with which we are concerned. We shall extract item 51 :

Serial Description of the goods Point of levy Rate of tax per

Number cent

51 Scents and perfumes, powders, At the point of first 7

snows (including all purposes sale in the State

creams and cold and vanishing

creams) and scented hair oils

2. This item 51 itself is an amendment of an earlier item 51 which read as follows :

Scents and perfumes, powers, snows scented hair oils, scented sticks, cosmetics and toilet requisites, except soaps.

3. It was felt that it was necessary to amend item 51 as it stood in those terms which have just now mentioned because of two reasons. It was represented that the scents and perfumes used in the preparation of scented sticks were twice taxed, later on when the scent was utilised for manufacturing scented sticks. IT was also represented that toilet requisites, mentioned in item 51 was a vague expression and the scope of the expression was not very clear. As a result of these representations scented sticks and toilet requisites and naturally the excepted soaps were omitted and item 51 extracted at the beginning of this judgment with which we are concerned has come into existence.

4. In order to make the Legislative history complete, we may refer to the fact that there has been a further amendment effected and item 51 now in the statute reads as follows :

(i) Scents and perfumes :

(ii) hair oils, hair, creams hair, dyes hair darkeners hair tonics, shampoos hair lotions, pemades and vaselines;

(iii) lipsticks, lip salve, nail polish, beauty boxes nail brush, face powder, toilet powder, baby powder, talcum powder, powder compacts, powder

pads and puffs, toilet sets (without contents) scent spray ,cleansing milk, eye liners all sorts, eye shadow, eye brow pencils, eau-de-cologne, eye-

lashes, brushes, toilet sponges, solid cologne, lavender-water snows, face creams, all purpose creams, cold creams, vanishing creams, beauty milk,

skin-folds, skin tonics, complexion rouge, nail cutters, sanitary towels, astringent lotions, after-shave lotions and creams and deodorants.

5. The question for our considerations turns on the following facts : The assessee is a company which manufactures what is called synthetic

essential oils. Two varieties of those oils are mentioned as Musk and Jasmine essences. We asked for these oils being produced before us and a

variety of these types of oil were produced before us. They emanated different fragrance. Most of them are of a pungent nature and they are of

different colour. It was not suggested at the time in the proceedings that these synthetic essential oils are classified as scents or perfumes for

application on the human body as a part of the requirement of toilet for the human body. But it is admitted that these synthetic essential oils have

been utilised for the purpose of making toilet requisites such as soaps, powders

or cosmetics and various other items. In these circumstances, the question arises whether these articles manufactured by the assessee or at any rate sold by them would fall under item 51 of the First schedule to the Madras General sales Tax Act referred to. It is the assessee's contention that these oils will not fall under that item.

6. Before we deal with the question, we would like to make a few general observations. If scents and perfumes stood by themselves without anything else being mentioned, then the decision of the Supreme Court reported in *Commissioner of Sales Tax U.P. vs. Indian Herbs Research*

and *Supply Co.*, would apply and the fact that either has to be applied or that the substance must be mixed with some other substance to

produce a chemical compound which would result in fragrance being produced would not alter the effect of the substance being construed as

perfumes. It was held by the Supreme Court in the above-mentioned decision that *dhoop batti* which may be similar to scented sticks is a perfume

for the purpose of the entry in the Act that they construed which consisted of only two items, namely scents and perfumes. This decision, if not in

express terms, certainly by necessary implication, overrules the decision of this Court reported in *Mettur Sandalwood oil Co. vs. The State of*

Madras, which held that sandalwood oil used as a base for preparing perfumes and other articles will not be a perfume or scent within the scope of

item 51 as it stood at that time. We do not wish to express any final opinion on this matter whether the Supreme Court overruled the decision in

Mettur Sandalwood Oil Co. vs. The State of Madras, because that question does not really arise for decision.

7. It is a well known principle of law that if there are enumerated items in an entry and it is followed by a general expression of other items or

words like *toilet requisites* the rule of *ejusdem generis* will apply the *toilet requisites* will have to be construed or other items will have to be

construed as being of the same nature as the items mentioned earlier provided it is possible to infer from the specified items a genus which can be

projected on to other unspecified items. Equally well established is another principle that when we are to construe particular words in an entry in

item 51 of the first Schedule to the Madras General Sales Tax Act, it is not as though we must take any particular items, find out its dictionary

meaning or the meanings attributable to that particular item and disregard the effect on that item arising from the association with other items and

limitation or expansion of the meaning of that item by such association. These are principles too well established to need quoting any authority.

8. Now turning to the authorities of this Court we find that in decision reported in *Prakash Stores vs. State of Tamil Nadu*, the view was taken that

in view of the decision of the Supreme Court in *Commissioner of Sales Tax, U.P. vs. Indian Herbs Research and Supply Co.*, the principle of the

decision in *Mettur Sandalwood Oil Co. vs. State of Madras*, cannot be applied and whatever be the position arising out of the decision of this

court in *Mettur Sandalwood Oil Co. vs. State of Madras*, in view of the decision of the Supreme Court in *Commissioner of Sales Tax vs. Indian*

Herbs Research And Supply Co., it has to be held that jasmine essence is a perfume within the meaning of entry 51 of Schedule I of the Act.

Jasmine essence therein was utilised for the purpose of manufactured of scented sticks. It was not argued before the Court that scents and

perfumes were not the only words used in entry 51 of the First Schedule or that because there are other expressions used in item 51, scents and

perfumes must be given a limited meaning and that therefore the jasmine essence which is not used as such for toilet purposes by human beings

should not be construed to be articles falling under entry 51 of the First schedule. Why we are referring to this aspect is that the separate categories

of goods that can be considered as pertaining to toilet can be divided generally under three main heads. This aspect has been considered by the

Kerala High Court in the decision reported in *Deputy Commissioner vs. Jos Zachariah* the learned Chief Justice who wrote the judgment in the

case observed that toilet requisites is general expression and that it covered broadly speaking, three categories of things : (1) toilet preparations,

(2) toilet accessories and (3) toilet instruments.

9. The Court was concerned with the question whether combs will come within the entry 48 of Schedule I of the General Sales Tax Act, 1125

(ME) in Kerala. That entry was in these terms :

Scents and perfumes, powders, scented hair oils, scented sticks, cosmetics and toilet requisites except soaps.

The Court in paragraph 5 stated as follows :

Toilet requisites is a general expression and it covers broadly speaking, three categories of things :

(1) toilet preparations :

(2) toilet accessories; and

(3) toilet instruments.

The items enumerated in entry 48-Scents and perfumes powders, snows, scented hair oils, scented sticks, cosmetic and soaps-all come under the

first category. The hair pins with which the Madras High Court had to deal in Deputy Commr. of Commercial Taxes vs. Ambika Stores, and the

combs intended for being worn in the hair which are mentioned by the Bombay High Court in Plastella and Co. vs. State of Bombay, come under

the second category. The combs with which we are concerned-which according to the Shorter Oxford English Dictionary are strips of wood,

bone, horn, metal etc., with teeth used for disentangling, cleaning and arranging the hair, or keeping it in place-come under the third category. By

the application of the rule of ejusdem generis the expression "toilet requisite" in entry 48 will have to be confined to items coming under the first

category, that is, toilet preparations like scents and perfumes, powders, snow, scented hair oils, scented sticks, cosmetics and soaps".

10. Quoting from the Encyclopaedia Britannica, the Court further observed with reference to toilet preparations that some of them are bath

preparations, dental preparations hair preparations lipsticks, medicure preparations, rouges, shaving preparations, skin creams, soaps and toilet powders.

11. In the back ground of what we have stated it will be useful to refer closely to the articles mentioned in item 51 of the first schedule which we

have to construe. When we look at that we find that every one of the items mentioned therein relates to what are used or are usable for beautifying

the body of a human being. Powders, snows (including perfumed creams, cold and vanishing creams) and scented hair oils and also scents and

perfumes clearly fall under this category. Therefore to give a meaning to perfumes merely from the fact that it would also emanate a scent or

fragrance or a odour that it is a perfume would be giving to the item a meaning quite different from what the general sense item 51 conveys when

read as a whole. As we indicated earlier in the judgment such entries will have to

be read as a whole, and not, if we may say so, by applying the principle of ejusdem generis backwards by applying the sense of the words that follow a particular word to that particular word, but by the normal interpretation of words occurring in a context taking its tenor and its content and scope from the words that occur along with it in a single entry for the single item. What we are stating must follow because scented sticks are not normally used by human beings for beautifying the body, though they are used for the purpose of adding fragrance to the halls in residential houses and other places of worship etc. We are not concerned with this aspect because as we mentioned a while ago, all the items mentioned in item 51 with which we are concerned are items which are utilised by human beings for beautifying their bodies or for making it more fragrant or for other toilet purposes, if we give to words scents and perfumes a meaning, perhaps a limited meaning to scents and perfumes because read in the context in which the words occur along with the other words and such item mentioned in that item, item 51, which refer except for scents and perfumes only to such items which are applied to the body, such meaning is more appropriate. This being so, we are of the view that perfumes occurring in this item which is the word relied on by the counsel for the Revenue as supporting his contention that these synthetic essential oils fall within that item and are therefore taxable at the single point at the rate mentioned against that item cannot be accepted.

12. Something to this effect has been said by this court in the decision reported in *The State of Madras vs. S. P. Vadivel Nadar and Sons*, though not in so many words. We venture to think that the same principle that we have stated had been applied by Veeraswami, J. as he then was, when he rendered the judgment in that decision. It was held therein that *Sarvaroga Sanjeevi Thailam* which is a medicinal preparation and mainly used as a cure for skin disease but appears to have perfume and gives out an agreeable odour, does not fall within the description of any one of the articles in item 51 of the First Tax Act, 1959. Merely General Sales Tax Act, 1959. Merely because its application may incidentally lend beauty will not alter the true character of the article. Here we may digress to consider one other aspect.

13. The decision of this Court in *Prakash Stores vs. State of Tamil Nadu* on doubt

when read with in superficial manner appear to strike a different note, but we may point out that the aspect which we have considered here were never suggested before the court, never considered by the court or even adverted to. This decision cannot therefore be an authority against what we have indicated.

14. That aspect is whether this particular word would have wide meaning without reference to the other words mentioned in item 51. We think that

the word should be understood in the context in which it appears and the attempt has been to include in the item such articles as are utilised as

toilet preparations, coming within the first category mentioned in the decision of the Kerala High Court reported in Deputy Commissioner vs. Jos

Zachariah. In view of the admitted fact that these synthetic essential oils are never utilised for the purpose of beautifying the body by direct

application to the body, these cannot be considered toilet preparations in the sense in which it has been dealt with by the Kerala High Court in

Deputy Commissioner vs. Jos Zachariah. In fact counsel for the assessee suggested that an application of any of these synthetic essential oils

directly to the body may cause injury to the body and that they are not capable of being used as such.

15. In the light of the above discussion we come to the conclusion that the synthetic essential oils which are sold by the appellants before us, the

dealers, will not fall within item 51 of the Schedule 1 of the Act and that these oils cannot be taxed at the single point at the rate mentioned against

that item.

16. We have already extracted the new item in Schedule I of the Act which was introduced by Act 7 of 1977. The schedule of that item is

different. Scents and perfumes are placed separately in one sub-clause and various other items are mentioned after-wards. We are not concerned

with the construction to be placed on that item 51 as it stands to-day and we safeguard ourselves by making it clear that we express no opinion

with regard to item 51 of the First Schedule to the Act as it stands to-day.

17. In the light of these discussions, we allow these appeals and appeals and set aside the order of the Board of Revenue passed under S. 34 of

the Act. We direct the parties to bear their respective costs.