
(1972) 09 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 703 of 1972

Amir Chand Om Parkash

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 25-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 11A, 5

Citation : (1973) 31 STC 232

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : Bhagirath Dass and B.K. Jhingan, for the Appellant; L.K. Sood, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—This judgment will dispose of Civil Writs Nos. 703 and 704 of 1972.

2. For facility of reference, the facts giving rise to C.W. No. 703 of 1972 may be briefly given. The petitioner is carrying on the business of manufacture and sale of dhoop and agarbatti and the firm is registered under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). For the year 1968-69, the petitioner was assessed on the turnover of Rs. 15,992.83, which related to the sale of dhoop and agarbatti at 6 per cent. in accordance with Section 5 of the Act. The petitioner was served with a notice u/s 11A of the Act stating therein that the items relating to dhoop and agarbatti had been under-assessed and he was called upon to show cause why the tax at higher rate be not charged from him. The petitioner appeared before the Assessing Authority and submitted that dhoop and agarbatti were not attracted to enhanced liability of sales tax at the rate of 10 per cent., but his submissions did not find favour with the said authority. The petitioner has challenged this order, annexure A to the petition, dated 31st January, 1972, passed by respondent No. 1 in this petition.

3. The learned counsel for the respondents has raised a preliminary objection. According to him, the petitioner had remedies under the statute which he did not avail but He submits that I should decline to interfere under Article 226 of the Constitution in the circumstances of this case. I find no merit in this submission made by the learned counsel. If the action of the Assessing Authority is outside the provisions of the Act, then he cannot be forced to file appeals and revisions before the authorities under the statute. He can straightway come to this court and have the illegal demand quashed. The preliminary objection raised by the learned counsel for the respondents is, thus, overruled.

4. Section 5 of the Act provides that tax at the rate of six paise in a rupee may be imposed on the sale of ordinary goods. Regarding luxury goods, as specified in Schedule A appended to the Act, tax not exceeding ten paise in a rupee can be imposed. Entry 16 to Schedule A as amended by a notification issued by the Punjab Government on 6th September, 1968, runs as under :

(16) Cosmetics, perfumery and toilet goods excluding toothpaste, tooth-powder, kum-kum and soap.

5. The word "perfumery" has not been defined in the Act and according to the scheme of Section 5 and the language used in this entry, all items of perfumery, which correspond to the description of luxury goods, would fall within the ambit and scope of this entry. The learned counsel for the respondents has brought to my notice Commissioner of Sales Tax, U.P. v. Indian Herbs Research and Supply Co. [1970] 25 S.T.C. 151 (S.C.). In this case, the Supreme Court of India observed as under :

It is evident therefore that the word "perfume" originates from the word "fumare" which means to "smoke" or to emit vapour given off by some burning substance. In Encyclopaedia Britannica, Volume 17, 1965 Edition, at page 505, it is similarly pointed out that the literal meaning of the word "incense" is the same as "perfume" but "perfume" has later on acquired an extended meaning so as to include anything sweet from smoking incense to fragrance of flowers. We are, accordingly, of the opinion that the word "perfume" in item No. 37 of the Government notification should be construed in its ordinary sense, i.e., any substance natural or prepared which emits or is capable of emitting an agreeable odour either when burned or by the application of some foreign matter to induce any chemical reaction which results in fragrant odours being released from that substance. If we are right in taking this view, dhoop and dhoop-battis manufactured by the respondent fall within the category of "perfume" under item 37 of the Government notification and are liable to tax imposed therein. We should like to add that in Prahald Das Gupta, Rajadarwaza, Varanasi v. Sri C.S. Saxena, Sales Tax Officer, Varanasi Civil Misc. Writ No. 1878 of 1962 decided on 17th October, 1962, the Division Bench of the Allahabad High Court has taken the view that agarbattis fall within the dictionary meaning of "perfume" as it was a kind of incense which gave out agreeable odour when burned and, therefore, fell within item No. 37 of the Government notification. This decision supports the

opinion that we have expressed that dhoop and dhoop-baltis fall within the category of "perfume" and are liable to tax under item No. 37 of the Government notification.

6. In view of this authoritative pronouncement, it has to be held that dhoop and agarbatti can be regarded as items of perfumery. The question which remains to be considered is whether dhoop and agarbatti can be regarded as luxury goods or not. In Shorter Oxford English Dictionary, the word "luxury" is defined as follows ;

Habitual use of what is choice or costly, whether food, dress, furniture, or appliances. Refined and intense enjoyment. Sumptuous and exquisite food or surroundings. Something which conduces to enjoyment over and above the necessities of life. Hence, now, something which is desirable but not indispensable.

7. As a matter of fact, no water-tight definition has been given and can be given of this word for, something which may be of absolute necessity for a man of means may be regarded as a luxury for a poor man. In order to find out whether the sale of an article is exigible to tax at higher rate or not, we have to see whether an ordinary man regards it as a luxury or not. Dhoop and agarbatti as stated in the petition are mainly used by those who go to temples and other places of religious worship for offering prayers. These two items are within the reach of all and sundry. Their use does not give any added status to a person. In my considered opinion, none of them answers the description of the luxury goods. The Deputy Excise and Taxation Commissioner, Jullundur, vide his judgment dated 12th January, 1971, in another case came to the conclusion that dhoop and agarbatti could not be regarded as luxury goods. The reasons advanced by the said authority appear to be quite sound. Once it is held that dhoop and agarbatti cannot be regarded as luxury goods, then the assessment framed by the Assessing Authority cannot stand.

8. In view of what has been stated above, these petitions are allowed and the orders, annexures A, to the two petitions passed by the Assessing Authority are quashed.