

(1973) 05 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 12 of 1973

Assessing Authority and Another

APPELLANT

Vs

Amir Chand Om Parkash

RESPONDENT

Date of Decision : 08-05-1973

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1974) 33 STC 120

Hon'ble Judges : Harbans Singh, C.J.; Bal Raj Tuli, J

Bench : Division Bench

Advocate : R.K. Chhibbar, for A.G, for the Appellant; Bhagirath Dass and B.K. Jhingan and S.K. Hiraji, for the Respondent

Judgement

Harbans Singh, C.J.—This order will dispose of three appeals under clause 10 of the Letters Patent (L.P.A. Nos. 12, 13 and 126 of 1973) and General Sales Tax Reference No. 12 of 1972, which all raise a common question of law. The three appeals relate to Punjab whereas the business is carried on by the assessee in the sales tax reference at Ambala Cantonment in Haryana, but, for the purpose of the decision of the law point, there is hardly any difference between the law as applicable to the two States.

2. Section 5 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), is the taxing section. Sub-section (1) of this section is to the following effect:

Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates, not exceeding seven paise in a rupee as the State Government may by notification direct:

Provided that a tax at such rate, not exceeding ten paise in a rupee, as may be so notified, may be levied on the sale of luxury goods as specified in Schedule A appended to this Act from such date as the State Government may by notification direct. The State Government after giving by notification not less

than thirty days" notice of its intention so to do may by like notification add to, or delete from, this schedule, and thereupon this schedule shall be deemed to have been amended accordingly.

3. Subsequently, some changes have been made by the Haryana State with regard to the rate or the period for which the notice is to be given. However, this does not in any way affect the matter before us. The sole point for decision before us is, whether, if an article is specified by the State Government in Schedule A not specifically, but only in a generic form and then a question arises, whether a particular article answering that general description is a "luxury goods" and, therefore, liable to tax at the enhanced rate, as provided in the proviso to Sub-section (1) of Section 5 of the Act, the question can be gone into by this court.

4. In L.P.A. Nos. 12 and 13 of 1973, the goods in dispute are dhoop and agarbatti. In L.P.A. No. 126 of 1973, the goods in dispute are test tubes, beakers, flasks, etc., while in the sales tax reference, they are electrical water still automatic and electrical insulator and oven, which are used in School and college laboratories for educational purposes.

5. So far as L.P.A. Nos. 12 and 13 of 1973 are concerned, according to the department, dhoop and agarbatti are covered by entry No. 16 of Schedule A as in force in Punjab State. This entry is to the following effect:

Cosmetics, perfumery and toilet goods, but not including tooth-paste, tooth-powder, soap and kum-kum.

6. In the third appeal (L.P.A. No. 126 of 1973), the glass test tubes, etc., according to the department, are covered by entry No. 23 of the aforesaid schedule, which runs as under:

Glassware, glazedware and chinaware, including crockery.

7. So far as the sales tax reference is concerned, it is entry No. 17 of Schedule A as in force in Haryana State, which is said to cover the items in dispute. This entry is as follows:

Electrical goods other than --

(a) electrical plant, equipments and their accessories including service meters required for generation, transmission, and distribution; or

(b) electric bulbs, plugs, plug-shoes, plug bases, bulb-holders, flexible wires, torches, torch cells and monoblock pumping sets.

8. Schedule A both in Haryana and Punjab bears the heading "List of luxury goods".

9. Messrs. Amir Chand Om Parkash, who are the respondents in L.P.A. Nos. 12 and 13 of 1973, filed Civil Writs Nos. 703 and 704 of 1972 in this court challenging the assessments made by the general sales tax authorities at the

enhanced rate for the years 1968-69 and 1969-70, treating dhoop and agarbatti, in which the assessee was dealing, as "luxury goods" requiring the enhanced rate of sales tax, being covered by the description "perfumery" as given in entry No. 16 of Schedule A. The learned single Judge, in view of the decision of the Supreme Court in *Commissioner of Sales Tax, U.P. v. Indian Herbs Research and Supply Co.* [1970] 25 S.T.C. 151 (S.C.), came to the conclusion that inasmuch as dhoop and agarbatti, on being burnt, emit fragrance, they would be items of "perfumery". He, however, found that these articles could not be treated as "luxury goods" and, therefore, held that tax at the enhanced rate was not leviable on them. Hence, these two appeals (L.P.A. Nos. 12 and 13 of 1973) by the department.

10. Similarly, Messrs. Science House, Gokal Road, Ludhiana, who are respondents in L.P.A. No. 126 of 1973, were assessed to sales tax at a higher rate in regard to sale of goods like "beakers, test tubes, flasks, jars, graduated cylinders, condensers, etc.", which were used by the school and college laboratories for educational purposes, as being covered by entry No. 23 of Schedule A, being glassware. The assessee filed Civil Writ No. 3008 of 1972 and another learned single Judge came to the conclusion that they are certainly glassware, but as the same are not luxury goods, sales tax at the enhanced rate cannot be imposed. The learned Judge followed the decision given in Civil Writs Nos. 703 and 704 of 1972 (*Messrs. Amir Chand Om Parkash v. Assessing Authority* [1973] 31 S.T.C. 232), noted above. The department has filed L.P.A. No. 126 of 1973 against that order.

11. In Civil Writs Nos. 703 and 704 of 1972, the learned single Judge reproduced the definition of "luxury" given in the Shorter Oxford English Dictionary in the following terms:

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.

12. Then he went on to observe as follows:

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....

13. With great respect, we are entirely in agreement with the learned single

Judge that these two items, because of their peculiar use only in relation to the religious worship cannot be regarded as "luxury goods". A man of ordinary means would be as much inclined to offer religious worship as a man of means and by no stretch of imagination, these two articles can be treated to be articles of luxury.

14. Similarly, we are in full agreement with the view taken by the learned single Judge in Civil Writ No. 3008 of 1972 (Science House v. The Assessing Authority, Ludhiana [1973] 31 S.T.C. 235 out of which L.P.A. No. 126 of 1973 has arisen, that glass test tubes, etc., which are used for educational purposes, cannot be treated as items of luxury.

15. The main contention of the learned counsel for the department appearing in these Letters Patent appeals was that once the Legislature or the State Government after having applied its mind, considers a particular item as "luxury goods" and includes the same in the schedule, it is not open to the court to question whether any article so inserted is or is not luxury goods. There are two ways in which an item can be inserted in the schedule. One method is to give a list of specific items, like vacuum glass, bangles, telescope and opera-glass, which may in a sense be included as items of "glassware", because some parts of these articles are made of glass. Another way is to include certain items by giving a general description, like glassware, glazedware, leather goods, perfumery, etc. In the appeals before us as well as in the sales tax reference, with which we shall deal separately, the items in dispute are not specifically included and, therefore, we are not concerned with a case where a specific item is included in the schedule and the question arises whether such an article is or is not a luxury goods, and we express no opinion with regard to that matter.

16. Here the items are mentioned in a general way of which there may be a number of categories. Words "perfumery" and "glassware" would cover a very large number of goods, some of which would obviously be items of luxury whereas others, which are used by the ordinary man as a necessity or for educational or other purposes, could not be treated as "luxury goods" in the ordinary sense of the term. Apart from the question of schedule, nobody would ever treat glass flasks, beakers and test tubes, which are used in the school and college laboratories for experiments and making tests, as something of "choice or costly" or meant for "refined and intense enjoyment" or otherwise "exquisite food or surroundings". In fact, glass test tubes, beakers and flasks are indispensable items of school and college laboratories for giving education to the students getting scientific knowledge. Similarly, dhoop and agarbatti are indispensable articles for persons who want to perform religious worship.

17. According to the proviso to Sub-section (1) of Section 5 of the Act, before any item can be subjected to the enhanced rate of sales tax, as given therein, it is not only necessary that it must be luxury goods but it must also be specified in the schedule. Thus both these things are necessary. The Legislature included certain goods in Schedule A and in its wisdom delegated the power of adding to,

or deleting from, that schedule to the State Government, but this power has been circumscribed by saying that the State Government can include only "luxury goods". Therefore, where the Legislature or the State Government does not mention any specific article, but mentions only a particular type of an article by its generic description, i.e., items made of glass or of leather or perfumery, it must be assumed that while using a wide term in the schedule, which may cover thousands of varieties of articles, some being of daily necessity and use and the others being items of luxury, the intention of the Legislature or the State Government was to include only those of the items which can be described as "luxury goods". We feel that it is not only open to the court but it is also the duty of the court to adjudicate on the point, whether a particular item which is covered by general description given in the entry, would attract the enhanced rate of tax or not by going into the question, whether it can be treated to be an item of luxury goods or not. The argument of the learned counsel for the appellant was that once an article conforms to the general description given in the schedule, that article must always be treated to have been regarded as luxury goods by the State Government and, therefore, liable to enhanced tax. On a question being put to the learned counsel, he had to concede that, according to the interpretation put by him, the term "luxury goods" in the proviso to Sub-section (1) of Section 5 of the Act is superfluous and it would not make any difference, according to his way of interpreting the proviso, whether the word "luxury" existed or not in the proviso, because, according to him, any item that is specified in Schedule A would be liable to enhanced tax, irrespective of the fact whether in the ordinary parlance it cannot be treated as an item of "luxury goods".

18. We are afraid we cannot accept this argument. As is now well-settled, meaning must be attributed to every word used by the Legislature and, therefore, full meaning must be given to the words "luxury goods". In fact, this is a taxing statute and if there are two interpretations possible, the one, which is favourable to the taxpayer, has to be adopted. We are, therefore, definitely of the view that when an entry is made in Schedule A in the form of a generic term, then it is open to the court to decide, whether a particular item answering that general description is or is not a "luxury item". If it is a "luxury item", then it would be liable to the enhanced rate of tax. On the other hand, if it is not a "luxury item", then it would not be liable to the enhanced tax and where there is any doubt, the doubt must be resolved in favour of the taxpayer.

19. So far as dhoop and agarbatti are concerned, there is another way of looking at the matter. The entry (i.e., entry No. 16) is "cosmetics, perfumery and toilet goods...." The context in which the word "perfumery" occurs shows that what is meant by all the three general items "cosmetics, perfumery and toilet goods" are articles which are used for personal hygiene or pleasure. The items which are excepted from this entry are "tooth-paste, tooth-powder, soap and kum-kum". This exception also points to the same conclusion, viz., that only those articles of luxury, which are used for personal hygiene and pleasure were intended to be

included in this entry. So the word "perfumery" in this context would not include dhoop and agarbatti, Which are never used for personal hygiene or pleasure, but are primarily used for religious ceremonies.

20. The principle that in interpreting words used in conjunction, they should normally be given cognate meaning is well-recognized. See in this respect Maxwell on the Interpretation of Statutes, Eleventh Edition, where at page 321, the learned author observes as follows:

When two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general. The expression, for instance, "places of public resort", assumes a very different meaning when coupled with "roads and streets" from that which it would have if the accompanying expression was "houses".

21. This principle was pressed into service before the Supreme Court in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , and it was recognized that this was a rule of construction, though it was not accepted in the circumstances of that case. At page 614, it was observed by Gajendragadkar, J. (as he then was), speaking for the court, as under:

We are not impressed by this argument. It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider...

22. That was a case under the Industrial Disputes Act, 1947. In the present case, however, the context in which the word "perfumery" is used and the exceptions detailed in the entry, make it absolutely clear that the word "perfumery" was used in its cognate sense of cosmetics and toilet goods.

23. The learned counsel for the appellants relied upon a number of decisions of the Madhya Pradesh High Court. He was not, however, able to show to us that the provisions of the Act there were similar to the Act in Punjab with which we are concerned. In fact, the discussion in the cases referred to by the learned counsel makes it clear that there the relevant part of the taxing section only provided that a higher rate will be paid on goods in a particular schedule or part of the schedule.

24. In Commissioner of Sales Tax, Madhya Pradesh, Nagpur v. Mohanlal Ramkisan Nathani, Raipur [1955] 6 S.T.C. 136, "glassware" were included in a particular schedule imposing higher rate of tax and the question for consideration was, whether glass panes used in windows would come within the category of "glassware". The same was the point in Tribuwandas Gulabchand and Brothers, Nagpur v. State of Maharashtra [1965] 16 S.T.C. 452. One of the arguments was that glass panes and glass sheets would be "glass" and not glassware. This

argument was repelled. Similarly, in *Haji Jamaluddin Manguji v. State* [1955] 6 S.T.C. 141 glass bangles were also treated as glassware.

25. In the U.P. Sales Tax Act, 1948, item No. 37 of the schedule of goods which were subject to higher sales tax, was as follows:

Scents and perfumes (in English) and Itra tatha sugandhian (in Hindi).

26. The question arose in *Commissioner of Sales Tax, U.P. v. Indian Herbs Research and Supply Co.* [1970] 25 S.T.C 151 (S.C.), whether dhoop and dhoop-batti would fall within the category of "perfumes" under item No. 37 or not. The High Court came to the conclusion that dhoop and dhoop-batti would not fall in the category of "perfumes", because they are used for the purpose of puja. Relevant part of Section 3-A of the U.P. Sales Tax Act was in the following terms:

(1) Notwithstanding anything contained in Section 3, the State Government may, by notification in the official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify.

(2) If the State Government makes a declaration under Sub-section (1), it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding ten naye paise per rupee as may be specified.

(3) * * *

27. So there was no provision in the U.P. Act that the State Government should make this declaration only in respect of "luxury goods". The only point for determination was whether the words "scents and perfumes (in English) and Itra tatha -sugandhian (in Hindi)" in item No. 37 of the notification covered "dhoop and dhoop-batti". The argument of the department was that the word "perfumes" is a word of wider import than the word "scents" and includes therein all "incense". After giving the definition of "perfume" from the Oxford English Dictionary, their Lordships of the Supreme Court went on to observe as follows:

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....

28. The Supreme Court, therefore, came to the conclusion that as dhoop and dhoop-batti on being burnt emitted fragrant odours, it was covered by the word "perfume".

29. These decisions, therefore, are of no assistance to the learned counsel for the appellants in the present case for the simple reason that in the proviso to Sub-section (1) of Section 5 of the Act, it is provided that for charging enhanced tax two conditions have to be fulfilled, viz., (1) that the item should be a "luxury

goods" and (2) that it should be mentioned in the schedule. In the schedule, therefore, the Government is presumed to have entered only such goods as are luxury items. By using the general word "glassware" in the relevant entry, the Legislature obviously meant such glassware as are "luxury goods" and, similarly, by using the word "perfumery" in entry No. 16, it must mean such items of perfumery as can be categorised as "luxury goods". So far as the word "perfumery" is concerned, as already discussed above, the context in which it occurs also indicates that it is used only in respect of items used for personal hygiene. The word "glassware", therefore, cannot possibly apply to articles, like beakers, test tubes, etc., which are used only for educational purposes or for experiments connected with scientific research or development. Similarly, dhoop and agarbatti cannot be treated either as items of personal hygiene or as items of luxury, because they are required for religious puja and have to be used by all, whether rich or poor, and do not in any way add to luxurious living.

30. For the reasons given above, we feel that there is no force in the three appeals (L.P.A. Nos. 12, 13 and 126 of 1973) and dismiss the same with costs. Counsel's fee Rs. 100 in each appeal.

31. Coming now to G.S. Tax Reference No. 12 of 1972, the question referred by the Sales Tax Tribunal is as under:

Whether, on the facts and circumstances of the case, is it within the jurisdiction of the Tribunal to adjudicate as to what is luxury goods once it has been declared so in the schedule drawn up by the Government in accordance with the Act and Rules?

32. It was entry No. 17 of Schedule A which was stated to cover "electrical water still automatic" and "electrical insulator and oven" as being "electrical goods" and, therefore, liable to the enhanced rate of sales tax, i.e., 10 per cent instead of the general rate of 6 per cent. This argument was, however, negatived by the Tribunal and, at the instance of the department, the aforesaid question was referred to this court.

33. Here the finding of fact is that these instruments were sold for being used in school and college laboratories for educational purposes. For the reasons already given by us, these items cannot be treated as "luxury goods" and, as already indicated by us, in view of the words used in the proviso to Sub-section (1) of Section 5 of the Act, it is open to the court to adjudicate whether a particular item, which answers the general description of an entry given in the schedule, is or is not "luxury goods" because, the State Government must be taken to have used general words in the sense of covering all goods which can be treated as "luxury goods".

34. For the reasons given above, therefore, the answer to the question referred must be given in the affirmative. The respondent is entitled to his costs. Counsel's fee Rs. 100.