(1998) 02 MP CK 0028

In the Madhya Pradesh High Court

Case No : Income Tax R No. 6 of 1998

Commissioner of Commercial Tax APPELLANT

Vs

Dawar Brothers RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 33EEC

Citation : (2000) ILR (MP) 98 : (1998) 111 STC 319

Hon'ble Judges : Shambhoo Singh, J;Bashir Ahmed Khan, J

Bench : Division Bench

Advocate : P. Mathur, for the Appellant; G.M. Chafekar and P.B.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—This order shall also govern the disposal of ITR Nos. 7 of 1998, 5 of 1998, 8 of 1998 and 9 of 1998.

Is Vicco Vajradanti tooth paste, powder and turmeric cream a medicine ? The issue arises in this application filed by the Revenue u/s 44(2) of the Madhya Pradesh General Sales Tax Act, 1958, requiring reference by the Board on the following question of law :

"Whether, under the facts, and circumstances of the case, the Tribunal was justified in holding that Vicco Vajradanti (paste and powder) and Vicco Turmeric cream sold by the appellant was ''ayurvedic medicines'' covered by the expression ''drugs and medicines'' in entry No. 16 of Part IV of Schedule II to the Act liable to tax at the total rate of 5 per cent and not at 10.7 per cent and 14,45 per cent respectively ?"

2. The assessee deals in hosiery articles, machinery goods and toilet and cosmetic articles. He imported Vicco Vajradanti (paste and powder) and Vicco turmeric cream and was assessed from January 1, 1983 to December 31, 1983 at the rate of 10 per cent on tooth paste and powder vide entry No. 2 of Part III

of Schedule II to the Act and at 13.5 per cent on turmeric cream vide entry No. 21 of the Part II of Schedule II of the M.P. Sales Tax Act. He took appeal before the Appellate Deputy Commissioner, who upheld the assessment by order dated June 20, 1991. He then filed second appeal before the Board of Revenue which was allowed holding the product in question as "drugs and medicines" covered by entry No. 16 of Part IV of Schedule II of the Act.

3. The Revenue felt aggrieved and made reference application u/s 44(1) of the Sales Tax Act, which was rejected by the Board vide order dated August 4, 1997. While doing so, the Board drew support from its own Division Bench order and judgments of the Karnataka High Court in United Trading Agency v. Additional Commissioner of Commercial Taxes [1997] 104 STC 182, and of Bombay High Court in an allied matter against which special leave petitions were dismissed by the Supreme Court in SLP Nos. 126805 dated November 28, 1996 and 2123 of 1993 and concluded that the issue was no more res integra. It accordingly declared the products falling within the meaning of the definition of "drugs and medicines" under the Act and held that no question of law arose in the case.

4. The case of the Revenue is that since the taxing statute did not define "drugs and medicines", the disputed products required to be given their trade meaning and treated as such and not under the category of "drugs and medicines" as these contained no substance or preparation used in prevention or treatment of a disease and could not be credited with any curative power. It is also submitted that even the assessee was selling these products as cosmetic items and not medicines. Lastly it is argued that mere obtaining of licence by the assessee under the Drugs and Cosmetics Act, could not clothe these products with medicinal properties and bring them under "drugs and medicines" and that the judgments of the Bombay and Karnataka High Courts [United Trading Agency v, Additional Commissioner of Commercial Taxes [1997] 104 STC 182 (Kar)] were referable to some other enactments and Acts and were not attracted to point in issue.

5. It must be pointed out at the very outset that both Karnataka (United Trading Agency v. Additional Commissioner of Commercial Taxes [1997] 104 STC 182) and Bombay High Courts had reached the respective conclusions treating the products falling under the category of "drugs and medicines" on an elaborate reasoning and even on the evidence of experts and on noticing that judgments rendered by the Supreme Court and various High Courts, which were relied upon by the Revenue in this case also, were anterior to incorporation of chapter IV in the Drugs and Cosmetics Act by Amendment Act No. 13 of 1964 which was brought into force from February 1, 1969. Thereafter some more amendments were made in this chapter made effective from February 1, 1983 to regulate the manufacture for sale and distribution of ayurvedic, siddha and unani drugs and prohibiting any such manufacture except in accordance with prescribed standards and the licence to be issued by the prescribed authority.

6. That should have clinched the issue but for the dogged persistence of the

Revenue to indulge in a wild goose chase. Apart from the reasoning adopted in the judgments of two High Courts, with which we concur, we find it hard to understand how the status and character of these products could be thrown open to question once these were treated as "medicines and drugs" by the competent statutory authority in exercise of a valid statutory power. As these products were admittedly manufactured vide a validly issued licence u/s 33-EEC of the Act, that was the proof of there being "medicines and drugs" and these could be excluded from such classification only by some strong counter proof to the contrary to be adduced in exercise within the boundaries of the Drags and Cosmetics Act. A product validly declared a "drug or medicine" under the law cannot be de-recognised or de-classified on the ipse dixit of any external agency like a Revenue which cannot claim any expertise in the determination of the medicinal properties of such product.

7. Likewise a product may be commonly named or known as whatsoever or may be sold in whatever form, that by itself does not impinge on its true status and would not dilute its true nature and character as determined validly by a competent authority in exercise of a statutory power. Therefore, Vicco Vajradanti paste and powder or cream may be called so in the trade and yet these could possess medicinal properties for the treatment of tooth decay, swollen and bleeding gums and periodical disorder of teeth. It may be true that the expression "drag and medicine" was not defined in the taxing statute but that by itself did not empower the Revenue to question the nature and character of the disputed products.

8. Viewed thus, we hold that Vicco Vajradanti toothpaste and powder and turmeric cream fall under the category of "medicines and drags" so long as they are classified so by the competent statutory authority and are manufactured, distributed and sold through licence under the Drags and Cosmetics Act. It is a different matter if these are derecognised and declassified by the competent authority on an exercise contemplated by the relevant statute. But meanwhile these would retain their position and would not be regarded as toilet items or cosmetics taxable vide entry No. 21 of Part II of Schedule II of the M.P.C.T.A. It is further provided that the issue being no more res Integra does not give rise to any question of law and thus the reference application of the Revenue was rightly rejected. So all these applications.