(1976) 08 AHC CK 0016

In the Allahabad High Court

Case No : S.T.R. No. 673 of 1973

Commissioner of Sales Tax APPELLANT

Vs

Har Prasad Ayodhya Prasad RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Citation : (1977) 39 STC 420

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Judgement

R.M. Sahai, J.—The following question has been referred for the opinion of this court :

Whether mehdi was a cosmetic item taxable at 10 per cent or an unclassified goods taxable at 2 per cent in the year 1967-68 ?

2. The assessee, a manufacturer of mehdi powder used by the womenfolk for colouring, claimed before the assessing authority that it was liable to tax as an unclassified item. His plea was accepted, but, on appeal, the Assistant Commissioner (Judicial) was of the opinion that it is used for beautifying one''s person and, therefore, it was covered by the entry "cosmetics and toilet requisites" and was taxable at 10 per cent. Aggrieved by the decision of the appellate court, the assessee filed a revision which was allowed and the order of the assessing authority was restored. The assessee has not appeared in this court but from the statement of case it appears that his case in the court below was as follows :

Mehdi is a product of nature and has medicinal effect. The use of mehdi by womenfolk is only incidental and its primary purpose is ceremonial.

3. It has been held in a series of decisions by the Supreme Court that while interpreting words or entries in the Sales Tax Act, what has to be considered is the popular meaning of such words as understood in the commercial circle or in

popular parlance. The decisive factor cannot be the use to which a particular commodity is capable of being put to, but how it is commonly used. It may be that mehdi is used on ceremonial occasions, but in popular parlance it is understood as an article which is used to improve a woman''s appearance and to make her look more attractive.

4. The entry "cosmetics and toilet requisites" came up for interpretation before a Full Bench of this Court and following the decisions of the Supreme Court it has been held in Commissioner of Sales Tax v. Jai Shri Products, Varanasi 1974 U.P.T.C. 146, that cosmetic means a preparation to beautify hair, skin or complexion or to alter appearance of the body or for cleaning, colouring, conditioning or protecting skin, hair, nails, eyes or teeth.

5. In view of the above interpretation of the aforesaid entry by the Full Bench, there is no room for doubt that mehdi powder, being an item for beautification of the womenfolk, comes within the entry "cosmetics and toilet requisites".

6. In view of what we have stated above, our answer to the question referred to us is that mehdi is a cosmetic article taxable at 10 per cent.

7. As nobody has appeared for the assessee there shall be no order as to costs.