

---

**(1985) 02 AHC CK 0029**  
**In the Allahabad High Court**  
**Case No : S.T.R. No. 482 of 1984**

|                           |    |            |
|---------------------------|----|------------|
| Commissioner of Sales Tax | Vs | APPELLANT  |
| Raj and Co.               |    | RESPONDENT |

---

**Date of Decision :** 20-02-1985

**Acts Referred:**

**Citation :** (1986) 62 STC 76

**Hon'ble Judges :** Om Prakash, J

**Bench :** Single Bench

**Advocate :** R.V. Gupta, for the Respondent

**Final Decision :** Allowed

---

## Judgement

Om Prakash, J.—The short question for consideration in this revision, filed by the revenue, against the order of the Sales Tax Tribunal, Kanpur Bench, is: whether the product, namely, Roshan Shital Tail, manufactured by the assessee, is covered by the entry at serial No. 26 of Notification No. ST-II-1233/X-10(1)-1974 dated 14th April, 1974. The entry at serial No. 26(a), so far as relevant, is cosmetics and toilet requisites including hair oil, hair tonic, etc. Whereas, the assessing officer and the Assistant Commissioner (Judicial) [briefly A. C. (J) ] rejected the contention of the assessee that the product, namely, Roshan Shital Tail, is a medicine, the Tribunal accepted the contention of the assessee, that the product was not hair oil but a medicine.

2. I have heard learned counsel for the parties at some length. Before the A. C. (J), as many as 12 pieces of evidence were supplied by the assessee. Proof No. 12 was the carton in which the product of the assessee is supplied to the customers. The description given on the carton has been reproduced by the A. C. (J) in his order. It runs as follows :

Roshan shital tail varshon ki athak parishratn avam pahari jari butyun se tayyar kiya gaya hai-yeh tel dimagi kamjori balon ka girna va safed hona adi men labh kari hai tatha mastisk ko shitalta pardan karta hai.

3. Considering this description, the A. C. (J) took the view that the product, namely, Roshan Shital Tail, is nothing but a hair oil and it is covered by the entry at serial No. 26(a) of the aforesaid notification. On appeal the Tribunal observed :

...that oil manufactured and sold by the appellant possesses medicinal properties and is used in treatment of various ailments. I, therefore, hold that it comes under the category of medicine and as such it should be taxed under the category of medicine.

4. In my opinion, the question whether the oil manufactured by the assessee is or is not an item of cosmetic or of toilet, does not depend on the formula according to which, it is manufactured. The oil manufactured by the assessee is made of several ingredients including herbs, which may be useful for removing dandruff, preventing hair falling and which may be conducive to cooling the mind. The question is: how the product of the assessee is understood in the public, whereby the product is ultimately used. From the description given on the carton by the assessee, as reproduced by the A. C. (J) in his order, it is manifest that the oil manufactured by the assessee is to be applied mainly to human hair and, therefore, it is immaterial whether the assessee has named it as a hair oil or an oil simplicity. The description shows that the oil is useful for headache, mental weakness, for preventing hair falling, baldness and preventing the hair from being turned into grey. From this description it is clear that if oil is applied to hair, then the abovementioned qualities may follow. The argument of learned counsel for the assessee is that this description has not been correctly reproduced by the A. C. (J) in his order. No description otherwise has been shown to me to establish the fact that the description, as given by the A.C. (J) in his order, is incorrect. An appeal was filed to the Tribunal but the assessee did not raise any contention in the grounds of appeal that the description given on the carton was not correctly reproduced by the A. C. (J) in his order. That was the first stage to controvert the description as reproduced by the A. C. (J) in his order. The Tribunal also does not say that the description, as reproduced from the carton, by the A. C. (J) is incorrect. The description as reproduced by the A. C. (J) is, therefore, taken to be correct.

5. Then the argument made by the learned counsel for the assessee, is that there were so many other qualities of the oil, but due to lack of space on the carton all the qualities could not be printed and, therefore, the word "adi" meaning thereby "etc." was printed on the carton and that all the qualities of the oil have been stated in the advertisement, which was also filed before the lower authority. So the advertisement and the description on the carton are at variance. The A. C. (J), in my view, rightly concluded that the oil manufactured by the assessee was hair oil covered by the notification reproduced above.

6. The question came up before the Madhya Pradesh High Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore v. Shri Sadhna Aushadhalaya [1963] 14 STC 813 whether Maha Bhringraj hair oil manufactured by the assessee in the said authority was a "toilet article". While holding that the

Maha Bhringraj oil was a toilet item, the Madhya Pradesh High Court observed :

Every hair oil, whether it is manufactured scientifically with ingredients containing some medicinal properties or crudely, is intended as a hair tonic, for the prevention of dandruff, falling hair, baldness and for beautifying ultimately the hair and the appearance of the person using it. A hair oil may cool the brain or improve the system and induce sound sleep, but none the less it does not because of these qualities become a medicinal preparation.

7. I fully agree with these observations of the Madhya Pradesh High Court. Simply because in the advertisement made by the instant assessee, several qualities have been claimed of the oil, the produce will not become medicine but it continues to be the hair oil, as is established from the description given on the carton, reproduced by the A. C. (J) in his order.

8. In D.K. Sandu Brothers v. The State [1953] 4 STC 397 the Madhya Pradesh Board of Revenue held that medicated Bramhi oil and described on the carton as a specific for headache, burning of the eyes, insomnia, hysterical and other mental trouble, highly efficacious in falling and grey hair, is a toilet article. From this decision also, with which I fully agree, it appears that it is the essence, but not the form, which is material. An assessee may have claimed several qualities of his product in the advertisement to attract more and more customers, but the fact remained that on the carton qualities of hair oil only are described. The argument of the assessee is that the oil manufactured thereby is not the hair oil but a medicine for so many other things. The answer to this question has already been given that from the description given on the carton it is made clear that the oil has the qualities which are useful for human hair and, therefore, it is hair oil. It was not described on the carton as a medicine for any other ailment. From the entry made at serial No. 26(a), it is apparent that it refers to "hair tonic" as well. The preparation of the hair tonic may have several medicinal properties, yet the hair tonic has been described by the notification, reproduced above, as an item of cosmetics or toilet. Simply because the oil is manufactured by the assessee out of several herbs having the medicinal properties, it cannot be said that the oil was in the nature of medicine. One may ask a question : Whether after application of the oil, manufactured by the assessee, to the human hair, any other oil will be required to beautify the hair. Surely, the answer will be in negative. If the oil of the assessee were merely the medicine then, in addition to this, one would have required application of oil further to grease his hair. So the oil manufactured by the assessee is nothing but the hair oil.

9. Learned counsel for the assessee vehemently argued that the file of the A. C. (J) be summoned and all the documents filed before him should be seen. I do not agree with the submission because the learned counsel has not shown to me as to what are the contents of those documents and whether they have any relevancy to the issue. Unless the relevancy of the contents of the documents is established, no purpose will be served by insisting upon the revenue to produce those documents. The assessee cannot assume that the documents filed thereby

before the lower authorities are relevant, but the relevancy has to be established as a fact which has not been established before me.

10. For these reasons, I hold that the Tribunal was not right in holding that the product of the assessee was in the nature of medicine and not in the nature of hair oil.

11. In the result, the revision is allowed. There will be no order as to costs.