(1967) 10 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 166 of 1967

Commissioner of Sales Tax APPELLANT

Vs

Subhash Stores RESPONDENT

Date of Decision : 30-10-1967

Acts Referred:

Citation : AIR 1968 MP 203 : (1968) JLJ 673 : (1968) 13 MPLJ 484 : (1968) MPLJ 484 : (1968) 22 STC 9

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : K.K. Dubey, for the Appellant; K.A. Chitaley, for the Respondent

Judgement

Bhave, J.

At the instance of the Commissioner of Sales Tax, M P., the Sales Tax Tribunal (Board of Revenue, M P.) has referred the following question for our decision:

''Whether safety razor blades are cosmetic and therefore, their sale will be taxable under Entry 31 of Schedule II, Part II of the M. P. General Sales Tax Act?"

For the assessment period 1st April 1962 to 31st March 1963 the assessee was taxed on the sale of safety razor blades worth about Rs. 12,000 at the rate of 7 per cent under Entry 31 of Schedule II, Part II, of the M.P. General Sales Tax Act by the Sales Tax Authorities. The contention of the assessee was that the safety razor blades could be taxed under Entry 1 of Schedule II, Part VI, at 4 per cent only. This contention was accepted by the Sales Tax Tribunal on the ground that the safety razor blades were not included under Entry 31 of Schedule II, Part II. As interpretation of Entry 31 was involved, the Sales Tax Tribunal has referred the abovesaid question for our decision.

Entry 31 of Schedule II Part II of the Act reads as under

"Perfumery, cosmetic and all toilet articles including toilet soaps, toothpaste including manjan combs, brushes, perfumed hair oils etc "

The Sales Tax Authorities held that the safety razor blades came within the expression "cosmetic" as according to them, they are used for beautifying the face. The Sales Tax Tribunal, however held that ''persons undergo a shave not to beautify themselves but to avoid the ugliness which an unshaven face is taken to present''. It also held that razor blades could not fall under the category of "toilet articles". It was held that when such articles as toilet soaps, toothpaste including manjan, combs, brushes, perfumed hair oils were mentioned in the entry, if the razor blades were treated as ''toilet articles'', they would have also been mentioned. The Sales Tax Tribunal followed the decision of the Madras High Court in Deputy Commissioner of Commercial Taxes v. Ambika Stores 1963 14 STC 688 (Mad) where it was held that hair-pins were not toilet requisites. On this analogy it was held that razor blades also could not come within the description of "cosmetic" or "toilet articles." On this reasoning it was held that the razor blades could be taxed only under the general Entry No. 1 of Schedule II of Part VI, and not under the special entry No. 31" of Schedule II, Part II, of the Act.

Shri Dube, learned Government Advocate, appearing for the Revenue Board referred to the decision of this Court in Commissioner of Sales Tax, M.P. v. Sadhana Aushadhalaya, Jabalpur 1963 MPLJ 772 where it was held that the words "cosmetic" and "toilet", being words of everyday use, must be construed not in any technical or scientific sense, but as understood in common parlance and in commercial language. In that case, it was held that a ''toilet preparation'' is any preparation which is intended to affect, and conceivably to improve the bodily appearance. On this reasoning it was urged that the razor blades, which are used for improving the appearance of a person, must be included within the expression toilet articles" The meaning of the word ''"toliet" as given in Webester''s International Dictionary, is "act or process of dressing, especially, formerly of dressing hair, now usually cleansing and grooming of one''s person". It also means "the process of washing, grooming and arranging one''s self for the day''s activities or for a special occasion." Toilet soap, toiletry etc." are given as illustrations. "Toiletry" means "an Article or preparation used in making one''s toilet (such as a soap, lotion, cosmetic, tooth-paste shaving cream, cologne etc. "

If the expression "toilet articles" is interpreted as having relation to the process of washing, grooming and arranging one''s self for the day''s activities or for special occasion, it will cover a large variety of articles, such as, dressing-table in the bathroom and the sanitary fittings. While interpreting a similar entry in the notification issued by the State Government of Uttar Pradesh under the Sales Tax Act of that State, their Lordships of the Allahabad High Court in Plastic Products Ltd. Vs. The Commissioner, Sales Tax, U.P., came to the conclusion that the entry should be interpreted by following the rule of ejusdem generis. The entry considered by their Lordships in that case was "cosmetics and toilet requisites". It was therefore, held that the ''toilet requisites'' must be of the same genus as that of ''cosmetics'' and for this reason it was held that a plastic safety razor could not be included within the expression "toilet requisites". Justice Beg was of the opinion that the ambit of the "toilet requisites" must be confined to ''toilet preparations'' which are consumed in the process of application to the body, because that appeared to be the only sense in which the expression "toilet requisites" was used in the entry. Shri Chitale, learned counsel for the assessee, urged that, while interpreting the entry in question, we must also follow the same view and give the expression "toilet Articles" a limited meaning that is to say, Articles, such as, soaps etc., which are consumed in the process of toilet.

The expression "all toilet Articles" is preceded by the words" perfumery and cosmetics". The expression "including toilet soaps, tooth-paste including manjan, combs, brushes, perfumed hair oils etc." also indicates that the Articles covered under this entry are not all Articles which may be someway connected with the toilet of a person but which are of the same genus as perfumery, cosmetics etc. This Court has held in 1963 MP LJ 772, referred to above, that the words "cosmetics" and "toilet", being words of everyday use, must be construed as understood in common parlance. If the words are interpreted in that manner, in our opinion a razor blade cannot be interpreted to mean either as item of cosmetic or an Article of toilet. We are, therefore, of the view that the Tribunal was right in holding that a razor blade is not included in Entry 31 of Schedule II Part II, and that the sale thereof can be taxed only under entry 1 of Schedule II, Part VI of the M. P. General Sales Tax Act.

For the aforesaid reasons, our answer to the question is in the negative. The Commissioner of Sales Tax, M. P. shall pay the costs of these proceedings to the assessee. Hearing fee Rs. 100/-

