(1963) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 80 of 1963

Commissioner of Sales Tex	APPELLANT
Vs	
Shri Sadhna Aushadhalaya	RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:
Central Provinces and Berar Sales Tax Act, 1947 — Section 5(1)(c)

Citation : (1963) JLJ 631 : (1963) 14 STC 813

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : H.L. Khaskalam, for the Appellant; V.S. Pandit, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—In this reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the Commissioner of Sales Tax, Madhya Pradesh, the question propounded for decision is :-

Whether in the facts and circumstances of the case, Maha Bhringraj Oil is a toilet Article coming under item No. 11 of Part I of Schedule I to the C.P. and Berar Sales Tax Act, 1947, or is a medicinal oil and consequently liable to tax at Re. 0-0-6 in the rupee u/s 5(1) (c) of that Act ?

2. The assessee, Shri Sadhna Aushadhalaya, Jabalpur, deals in the manufacture and sale of Ayurvedic preparations. The turnover of the material assessment year included sales of the value of Rs. 520-8-0 of a hair-oil known as "Maha Bhringraj Hair-oil" manufactured and sold by the assessee. The Assistant Sales Tax Officer, Jabalpur, treated this hair-oil as a "toilet Article" falling under entry No. 11 of Schedule I of the Central Provinces and Berar Sales Tax Act, 1947, (hereinafter referred to as the Act), and taxed it at the rate of Re. 0-I-0 in a rupee u/s 5(1) (a) of the Act. The Assistant Sales Tax Officer overruled the contention of the assessee that the commodity was not a toilet Article but a "medicinal preparation" and taxable at the rate of Re. 0-0-6 in a rupee u/s 5(1) (c) as it was

not any of the goods enumerated in Part I or II of Schedule I. The decision of the Assistant Sales Tax Officer was upheld by the Deputy Commissioner of Sales Tax in an appeal preferred by the assessee. The matter was then taken by the assessee to the Board of Revenue. The assessee''s contention that Maha Bhringraj Hair-oil was a medicinal preparation and not a "toilet Article" was accepted by the Board of Revenue and accordingly the assessment was modified.

3. The question for determination is whether the oil manufactured by the assessee is a "toilet Article" falling under entry No. II, Part I, Schedule I. Section 5(1) (a) of the Act provides for tax at the rate of twelve pies in a rupee in relation to the classes of goods mentioned in Part I of Schedule I. Clause (c) of that Section prescribes the rate of tax as six pies in a rupee for the classes of goods not included in Schedule I or II. The relevant entry in Schedule I is as follows :-

II. Perfumery, cosmetics and all toilet Articles including toilet soaps.

It is common ground that if the hair-oil manufactured and sold by the assessee does not fall under the above entry, then it is not covered by any other entry in Schedule I or II. The question, therefore, that arises for determination is whether Maha Bhringraj Hair-oil is an Article falling under entry No. II. The assessee''s argument, which prevailed with the Board of Revenue, is that the hair-oil manufactured by them is not a "toilet Article" but a "medicinal preparation" inasmuch as the oil is prepared and manufactured according to a certain formula given in Ayurvedic medicinal books, that it has a bad odour, and that it is a specific for headache, burning of eyes, and for preventing falling hair. In our opinion, there can be little doubt that the oil in question is a "toilet Article" as well as a "cosmetic". The question whether an oil, which is to be applied to the hair, is or is not a "cosmetic" or a "toilet Article" does not depend on its fragrance or on the formula according to which it is manufactured. A hair-oil is clearly not a pure and simple perfume, and the question whether it has a sweet fragrance or a disagreeable odour is in no way determinative of its character as a hair-oil. 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 and 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. Now, the word "cosmetic" has been defined in Webster''s International Dictionary as meaning "any external application intended to beautify and improve the complexion, skin or hair." Other dictionaries also give the same meaning. The meaning of the word "toilet", as given in Webster''s International Dictionary, is "act or process of dressing, especially, formerly of dressing hair, now usually cleansing and grooming of one''s person." A "toilet preparation" is any preparation which is intended to affect, and conceivably to improve the bodily appearance. The words "cosmetics" 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. A hair-oil intended to be applied to the hair and supposed to act as a hair-tonic and to prevent dandruff, falling hair and baldness and to cool the brain does not cease to be a hair-oil merely because it is manufactured and sold by a person dealing in medicines and according to a process more complex than used in the manufacture of ordinary hair-oil. The object of all hair-oils is to tidy the hair, to promote luxuriant growth of hair and to prevent dandruff and falling hair, and it cannot be denied that if a hair-oil produces the effects proclaimed and claimed in regard to it, then the appearance of the person using it is undoubtedly improved. We have no doubt that the hair-oil manufactured by the assessee is a "toilet Article" and falls also within the meaning of the term "cosmetics".

4. Learned counsel for the assessee referred us to the decision of the Supreme Court Adhyaksha Mathur Babu''s Sakti Oushadhalaya Dacca (P) Ltd. and Others Vs. Union of India (UOI), to support the contention that the hair-oil in question is a medicinal preparation. The decision relied on is not in point here. In that case, the Supreme Court had no occasion to consider a question such as the one before us. All that was decided in that case was that three Ayur-vedic preparations, manufactured by the petitioner in that case, were medicinal preparations as defined in Section 2(g) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 ; that they were also capable of being used as ordinary alcoholic beverages ; and that, therefore, they would be liable to duty under the Central Act. The Ayur-vedic preparations considered in that case were intended for human consumption and not for application to hair or any part of body as a toilet Article or cosmetic. The hair-oil manufactured by the assessee in the present case falls within the letter of entry No. II of Schedule I. That being so, there can be no justification for treating it as a "medicinal preparation" merely because the assessee manufactures the oil following a formula given in an Ayurvedic treatise and because the fragrance of the oil is disagreeable to some people. It is common knowledge that many Sharbats and cool drinks are manufactured by concerns dealing in the sale and manufacture of Ayurvedic preparations. These beverages do not become medicines merely because they are manufactured by a person manufacturing and selling Ayurvedic medicines or according to a certain formula.

5. For all these reasons, our answer to the question referred to us is that the Maha Bhringraj Hair-oil manufactured by the assessee is a "toilet Article" falling under entry No. II of Schedule I, Part I, of the Act and, therefore, liable to tax at the rate of one anna in a rupee u/s 5(1)(a) of the Act. In the circumstances of the case, we make no order as to costs.

