

(1976) 04 AHC CK 0044
In the Allahabad High Court
Case No : S.T.R. No. 844 of 1973

Commissioner Sales Tax

APPELLANT

Vs

Chawla Stores

RESPONDENT

Date of Decision : 26-04-1976

Acts Referred:

Citation : (1977) 40 STC 57

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Bhartji Agarwal, for the Respondent

Judgement

R.M. Sahai, J.—The following questions have been referred for our opinion by the Additional Revising Authority, Sales Tax, Allahabad :

(1) Whether perfumed hair-oil appertains to the class of "cosmetics and toilet requisites" taxable at 10 per cent under Notification No. ST7094/X-1012-1965 dated 1st October, 1965, or as "oils of all kinds other than edible oils manufactured on ghanis by human or animal power" under Notification No. ST-1470/X-902(63)-50 dated 15th March, 1965, for the year 1968-69 ?

(2) Whether, in the facts and circumstances of this case, the turnover of Rs. 8,000 on perfumed hair-oil was taxable at 3 per cent or 10 per cent ?

2. The turnover of the perfumed hair-oil manufactured and sold by the assessee was assessed at 10 per cent as in the opinion of the Sales Tax Officer it was covered by the entry in Notification No. ST-7094 dated 1st October, 1965. The assessee being unsuccessful in appeal filed revision which was allowed as the Judge (Revisions) was of the view that perfumed hair-oil was included in the term "oils of all kinds", which was taxable at 3 per cent in the hands of manufacturers. The question raised in this reference is not free from difficulty. The test that would be applied in interpreting entries in the notification under the Sales Tax Act is of popular parlance in commercial circle. Perfumed hair-oil is an item which to our minds falls under both the notifications. It is as much covered

in the heading of "oils of all kinds" as under "cosmetics and toilet requisites". No dictionary or any test of popular parlance is needed to hold that perfumed hair-oil is covered by the entry "oils of all kinds". Similarly, it is well-known that perfumed hair-oil is an item of cosmetic and toilet requisite. This phrase has been the subject-matter of interpretation in two Supreme Court decisions reported in *Sarin Chemical Laboratory Vs. Commissioner of Sales Tax, U.P.*, and *State of Gujarat Vs. Prakash Trading Co., Ahmedabad*, "Hair-oil", as the expression itself indicates, is used for dressing hair. Its object is not only to keep the hair tidy, promote its growth, check baldness but also to beautify appearance. As such, there can hardly be any controversy that it is squarely covered by the entry "cosmetics and toilet requisites". Reliance on the principle *generalibus specialia derogant* has been placed by both the sides. In our opinion, both the entries are general in nature and have been expressed in widest terms. One of the tests in such circumstances is to find out the legislative intent from a perusal of various notifications issued from time to time. Notification No. ST-119 dated 7th June, 1948, exempts edible oil pressed on ghanis. The other Notification No. ST-117 dated 8th June, 1948, levies tax on oils of all kinds at 6 pies whereas edible oil is taxed at 3 pies. This shows that oil has been classified into two categories, i. e., edible oils and oils of all kinds. Edible oil has further been sub-classified as edible oil and edible oil pressed on ghanis by human and animal labour. The latter has either been exempt or taxed at a very low rate. This classification has been maintained from 1948 till today. The first notification regarding cosmetics and toilet requisites was issued on 1st July, 1948 and it was taxed at 9 pies. This was enhanced in 1956 to one anna. From 1956 to 1961 by Notification No. ST-905 dated 31st March, 1956, both oils of all kinds and cosmetics and toilet requisites were taxable at the same rate. From 1961 cosmetics and toilet requisites became taxable at 7 paise which was enhanced to 10 paise in 1965. A close look at the notification issued in 1948 would indicate that lesser rates were applied to goods which were more in demand by the common man, whereas higher rate was imposed on goods which were required by the middle class and still higher rate was applied to articles used by the affluent persons in society. For instance, edible oils, tanned leather, sugar, etc., were taxed at 3 pies, cotton yarn manufactured by mills, cloth manufactured by mills, woollen goods, leather goods, etc., were taxed at 6 pies, silk, linen, glassware, paints at 9 pies, motor vehicles, refrigerators, scents and perfumes were taxed at one anna. The pattern which is discernible has always been maintained. Keeping the classification in view, it would be more appropriate to treat perfumed hair-oil as cosmetic and toilet requisite. It is an item which is generally used by persons in the middle class and higher strata of society. There is yet another reason which impels us to hold that perfumed hair-oil is taxable at 10 per cent. Scents and perfumes, from the very beginning, have been taxed at higher rate. From 1948 to 1961 they were taxable at one anna and from 1961 onwards, became taxable at 7 paise, the rate at which the cosmetic and toilet requisite was taxable. Perfumed hair-oil apart from becoming exigible to higher tax becomes an item different from oils of all kinds. It appears oils which have

any other distinctive characteristic have been treated differently, for example, coconut oil, kerosene oil, diesel oil, etc. We are of the opinion that after the addition of perfume, hair-oil acquires a distinctive character of becoming a cosmetic and toilet requisite. It has been strenuously urged for the assessee that a perusal of Notification No. ST-8492 dated 30th September, 1969, read with ST-8490 dated 30th September, 1969, would demonstrate that perfumed hair-oil was always understood as being an item covered "by oils of all kinds". Its exclusion from the earlier notification indicates that before 1969 it was always intended to be included in it. The argument is attractive and not without force. The court below has also taken the same view. In our opinion, this is a colourless circumstance, for sometimes the word "include" is used by the legislature not to extend the meaning of a word but to give an exhaustive meaning of the word by way of clarification. The Privy Council in *Dilworth v. Commissioner of Stamps*¹, referring to the meaning of the word "include" in certain circumstances, observed thus:

But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include" and, in that case, it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

3. Considering the background in which the word "include" was used in the notification and the fact that perfumed hair-oil is, properly speaking, a cosmetic or toilet requisite, Notification No. ST-8492 of 1969 did nothing more than to give an exhaustive meaning to the words "cosmetics and toilet requisites". Perfumed hair-oil was specifically included in cosmetics and toilet requisites by Notification No. ST-8490. Once it was included, its exclusion or otherwise became immaterial. It may further be noticed that the notifications issued by the State Government were adopted by the legislature in 1971. It is presumed that the legislature is aware of the needs of its people and keeps abreast with the changes and developments in the society. An item of luxury with the passage of time becomes an item of necessity. It appears that it was more to clarify than to classify that perfumed oil was with effect from 1969 included as one of the articles under the heading "cosmetics and toilet requisites".

4. For the reasons stated above, we answer the question referred to us by saying that perfumed hair-oil appertains to the class of cosmetics and toilet requisites taxable at 10 per cent under Notification No. ST-7094/X-10121965 dated 1st October, 1965. Our answer to the second question is that the turnover of Rs. 8,000 of perfumed hair-oil was taxable at 10 per cent. As the question was not free from difficulty, we do not think it expedient to burden the assessee with costs. In the circumstances of the case, the parties shall bear their own costs.