(1980) 01 AHC CK 0026

In the Allahabad High Court

Case No : S.T.R. No. 564 of 1978

Commissioner, Sales Tax — APPELLANT

Vs

Pali Ram Laxmi Narain — RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11
Uttar Pradesh Sales Tax Act, 1948 — Section 11
Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1980) 46 STC 89

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The only question of law that arises for consideration in this revision filed u/s 11 of the U. P. Sales Tax Act by the Commissioner of Sales Tax is whether tikuli (prepared by glass or plastic, pasted on the forehead by ladies) was taxable as unclassified item as held by the revising authority or as cosmetic requisite.

2. The appellate and the assessing authorities held it to be cosmetic as it was used for beautification by ladies, both married and unmarried. In revision, this finding was not set aside but it was held as an unclassified item because the department did not press its claim in respect of tikuli before the Full Bench in Commissioner of Sales Tax v. Jai Shri Products 1974 U.P.T.C. 146 (F.B.).

3. The rationale of the order is patently erroneous. How could a concession by the standing counsel amount to a declaration of law ? What was not pressed before the Full Bench might have resulted in finality of judgment between the assessee and the department but it did not become a ratio decidendi that tikuli was not cosmetic requisite.

4. The learned counsel for the assessee attempted to support the order and urged that in view of the following observations made in the Full Bench tikuli cannot be considered to be cosmetic :

A cosmetic, as has been noticed above, means a preparation designed to beautify hair, skin or complexion or to alter appearance of the body or for cleansing, colouring, conditioning or protecting skin, hair, nails, eyes or teeth. A preparation of this nature would ordinarily be used up or consumed in the process of application, such as cream, lotion, powder, etc.

5. From the last sentence of this quotation, the learned counsel emphasised that the test for deciding whether a commodity is a cosmetic is whether it is "used up" in the process of application. He maintained that what could be put on or put off could not be covered in the word "cosmetic". It was urged that ornament adds to the beauty and a woman looks more attractive but only because of this it cannot be called cosmetic. According to him, the test of looking beautiful or not is not the test of whether an item is cosmetic. It was also urged that if an item is used both for beautification or otherwise then it cannot be considered to be cosmetic. Reliance for this was placed on Commissioner of Sales Tax v. Murari Brothers 1979 U.P.T.C. 1091, where it was held by this Court that as bhimseni kajal contained medicinal contents also, it was not cosmetic. For the same purpose, reliance was placed on B. Shah & Co. v. State of Gujarat [1971] 28 S.T.C. 5, where Nycil powder was not held to be cosmetic by the Gujarat High Court.

6. The Full Bench in Jai Shri Products1 held :

The expression ''cosmetics and toilet requisites'' has not been defined in the Act so that it shall have to be understood as in common parlance.

7. After laying down this principle the Full Bench proceeded to decide the meaning of the word "cosmetic" in the light of various dictionary meanings which can only be a guide and cannot be decisive about the popular meaning of a particular item in common parlance. In respect of articles which are typical to Indian society it might not be safe to rely on the dictionary meaning given in Webster or Oxford. An item like tikuli may be unknown in European society. To take guidance therefore from dictionaries or Encyclopaedia Britannica would be falling into error. The use of tikuli is typical to Hindu ladies. It might have been used by married ladies only in ancient times; but it is not denied, rather it has been found by the appellate authority, that in present times it is used both by married and unmarried womenfolk. That it is an item for beautification of appearance cannot be doubted. It must indeed be a very drab and dull sense which does not see attraction in a woman using tikuli. It is normally sold in shops which sell items used by ladies for improving their appearance. Even otherwise one of the meanings given to cosmetic is that which alters appearance. It was for this reason that the Full Bench used the word "ordinarily". It is, therefore, not possible to accept the argument of the learned counsel for the assessee that

tikuli is not an item of beautification. Nor is the argument of putting on and putting off acceptable. As held by the Full Bench it is the popular meaning which has to be considered while deciding whether an item is cosmetic or not. In no strata of society ornaments are considered to be cosmetic. The illustration of ornament therefore is not apposite.

8. There is yet another reason for not accepting the argument of the learned counsel for the assessee. The notification with which the Full Bench was concerned was Notification No. 905 dated 31st March, 1956, and the entry was "cosmetics and toilet requisites". This entry continued till 1969, except for change of rate, when it was substituted by Notification No. 8490 dated 30th September, 1969. The entry reads as under :

Cosmetics and toilet requisites including :-

(a) Hair clips, hairpins....

(b) Tooth-paste, tooth-powder....

(c) Alta, lipstick, nail polish....

(d) Shaving sets, safety-razors....

9. It cannot be disputed that for the assessment year 1971-72 it is this notification modified by Notification No. 332 dated 15th November, 1971, which is applicable. It includes beauty boxes along with alta, lipstick and nail polish which cannot be used up. It indicates that the entry has to be understood in the widest sense. The view taken by the Additional Judge (Revisions), therefore, that tikuli should be taxed as unclassified item cannot be upheld.

10. In the result, the revision succeeds and is allowed. The question of law raised by the Commissioner of Sales Tax is decided by saying that tikuli was taxable as cosmetic requisite. The Commissioner of Sales Tax shall be entitled to his cost, which is assessed at Rs. 50.