(1970) 01 AHC CK 0012

In the Allahabad High Court

Case No : Sales Tax Reference No. 62 and 63 of 1968

Commissioner, Sales Tax — APPELLANT

Vs

Pradeep Products — RESPONDENT

Date of Decision : 01-01-1970

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : (1970) 26 STC 74

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Advocate : R.C. Sharma and J.P. Khandelwal, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—The only controversy between the assessee and the department was whether ingoor and sindoor were "cosmetics and toilet requisites" or "dyes, colours and compositions thereof" within the meaning of entries 3 and 6 of the notification dated 1st April, 1956, issued u/s 3-A of the U.P. Sales Tax Act, on the one hand, or whether these articles were unclassified items taxable u/s 3 of the Act on the other. The assessing officer held that ingoor and sindoor were "toilet and cosmetics" and levied tax on the assessee on that basis. On appeal, the finding was reversed. It was held that these articles did not constitute cosmetics and toilet but were dyes and colours within the meaning of entry 6 and as such they were taxable at the same rate as cosmetics and toilet. The assessee was not entitled to any relief.

2. The Judge (Revisions), however, took a different view. He held that ingoor and sindoor were neither cosmetics and toilet nor dyes and colours within the meaning of any of the aforesaid two entries. He held that they are taxable as an unclassified item.

3. At the instance of the Commissioner, Sales Tax, Uttar Pradesh, the following question has been referred to this court for its opinion :

Whether ingoor and sindoor under these circumstances are taxable u/s 3-A or u/s 3 ?

4. The Judge (Revisions) found as a fact that ingoor and sindoor are not used by all sorts of ladies but are used only by married ladies, not for the purposes of beautifying their faces, but to show that their husbands are still alive.

5. In Webster''s Third New International Dictionary the word "cosmetic" has been defined to mean, "the art of beautifying the body-a preparation (except soap) to be applied to the human body for beautifying, preserving or altering the appearance of a person or for cleansing, colouring, conditioning or protecting the skin, hair, nails, lips, eyes or teeth." Similarly, in Corpus Juris Secundum, Volume 20, the term has been defined as meaning any external application intended to beautify or improve the complexion, skin or hair.

6. Similarly, the word "toilet" in Webster''s Third New International Dictionary means "to make one''s toilet; dress-groom, the process of washing, grooming and arranging one''s self for the day''s activities or for a special occasion.

7. In Plastic Products Ltd. v. Commissioner of Sales Tax, U.P., Lucknow [1967] 19 S.T.C. 480, a Bench of this court held that the dictionary meaning is very wide and toilet requisites cover a large variety of articles ranging from toilet-paper, toilet cloth to the requirements of the dressing table and bath-room. If that is the meaning which has to be given to toilet requisites then a safety razor would conceivably fall within it. Such meaning could only have been given if item 6, "toilet requisites", had stood alone but they are preceded by the specific word "cosmetic" and, therefore, the rule of ejusdem generis in the construction of statutes will come into play. In the context, manufacturers of all "toilet requisites" were not to be taxed at a higher rate. It was only the manufacturer of such toilet requisites as would be of the same genus as "cosmetics" that were to suffer the higher tax. It was held that it could not have been the intention to include all kinds of articles or artificial aid, which might go to beautify or render the body more beautiful as toilet requisites such as necklaces, jewellery, hairpins, scissors or bangles. On the rule of ejusdem generis, therefore, "toilet requisites" must be confined to those articles which are of the same genus as "cosmetics". It will,-therefore, appear that such articles that are used for the purpose of beautifying the human body or for preserving or altering the appearance of a person, would alone come under this term "cosmetics and toilet requisites" as used in the aforesaid notification.

8. On the finding of fact ingoor and sindoor are not used for beautifying the face or the body. Their use is confined to married women, only for the purpose of indicating their married status. In view of such use, it can hardly be said that ingoor or sindoor would answer the connotation of the phrase "toilet and cosmetics".

9. The view of the Judge (Revisions) that these articles would not be within entry 10 namely, "dyes, colours and compositions thereof" has not been challenged

before us.

10. In our opinion, the Judge (Revisions) took a correct view of the law when he held that ingoor and sindoor would be taxable as unclassified items u/s 3.

11. We answer the referred question as follows :

Ingoor and sindoor are taxable u/s 3 and not u/s 3-A.

12. The assessee would be entitled to his costs which we assess at Rs. 100; one set of costs. The counsel''s fee is assessed at the same figure.

