(1970) 04 AHC CK 0016

In the Allahabad High Court

Case No : S.T.R. No. 574 of 1969

Commissioner, Sales Tax — APPELLANT

Vs

Ram Babu and Company — RESPONDENT

Date of Decision : 20-04-1970

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 6
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1971) 28 STC 81

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—The Additional Judge (Revisions) Sales Tax, Agra, has submitted this statement of the case u/s 11(3) of the U. P. Sales Tax Act for the opinion of this Court on the following question of law.

Whether Tinopal is a chemical taxable at 7 per cent, covered under item No. 4 of Notification No. S.T. 6438/X-1012-1962 dated 1st December, 1962, or a washing material taxable at 4 per cent. under item No. 32 of the same notification ?

2. The dispute arises in respect of the assessment year 1964-65. The assessee deals in several commodities including Tinopal. The assessing authority held that Tinopal was a chemical taxable at 7 per cent. The Judge (Revisions), however, reversed the finding. According to him, Tinopal was a washing material taxable at 4 per cent.

3. A similar question arose before a Bench of this Court in Ear Narain Purshottam Dass Colour Co., Sadhwara Street, Farrukhabad v. The Commissioner of Sales Tax, U.P., Lucknow [1971] 28 S.T.C. 77 (S.T.R. No. 614 of 1965, decided on 11th February, 1969). It was held that for the assessment years 1958-59 and 1959-60, Tinopal was a chemical liable to tax as a chemical.

4. By Notification No. 905/X dated 31st March, 1956, issued u/s 3-A, U.P. Sales

Tax Act, the State Government declared that the turnover of "chemicals of all kinds" among other commodities would be liable to tax at one anna per rupee at the point of sale by the importer where the goods were imported from outside Uttar Pradesh and at the point of sale by the manufacturer where the goods were manufactured in Uttar Pradesh. This entry was interpreted to include "Tinopal" in Har Narain''s case [1971] 28 S.T.C. 77 referred to above. Pathak, J., held that Tinopal brands are optical whitening agents of varying chemical structure, giving a wide range of white shades from greenish blue to violet, and they are used to improve the'' whiteness of bleached textiles. Tinopal is also used in dyeing textiles. It was observed that fabrics containing white effect threads can be much improved by applying Tinopal in the washing or clearing bath and the preliminary or after-bleaching process can in some cases be shortened or omitted altogether. He observed that in the absence of any material on the record, it may be taken that what the manufacturer represents the product to be capable of achieving is what influences the consumer to buy it. He held that Tinopal was understood in the mercantile community as a chemical. It was urged in that case that Tinopal is not a. chemical and can be properly described as washing material. Pathak, J., took the view that a chemical may also be used as washing material, and the mere circumstance that it is possible to distinguish Tinopal as washing material cannot take it out of the category of "chemicals of all kinds". On this finding he held that Tinopal fell within the entry of "chemicals of all kinds" in the notification dated 31st March, 1956.

5. Gulati, J., observed that Tinopal is an article of everyday use, its main use being in the laundry. In the popular sense it is a washing material. It is described by its manufacturer as a whitening agent, but whitening is also one of the main purposes of washing clothes. The fact that the whitening brought about by Tinopal is a chemical process is of no consequence because that is not the criterion upon which entries in the notifications under the U.P. Sales Tax Act are to be interpreted. It was then observed that with effect from 1st April, 1960, washing materials were separately listed in another notification u/s 3-A of the Act. If an article falls in a specific classification of "washing materials" it would cease to belong to the general category of chemicals. In the assessment years 1958-59 and 1959-60 there was no such separate classification. Tinopal was hence held to be governed by the general entry "chemicals of all kinds".

6. It appears that the notification of 1st April, 1960, creating a separate entry of washing materials was modified by another Notification No. S.T. 6438/ X-1012-1962 dated 1st December, 1962. Under it washing materials were further sub-divided into two entries. Entry No. 20 stated "soap other than washing soap" and it imposed a tax of 7 per cent. Entry No. 32 stated "washing soaps and other materials used for washing purposes" and this was taxable at 4 per cent. "Chemicals of all kinds" continued to be taxable at 7 per cent. under the original notification.

7. While dealing with a similar situation, the Supreme Court in The Commissioner

of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, observed that it is now well settled that while interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, in their commercial sense. The Supreme Court referred to its decision in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, . In that case Section 6 of the C.P. and Berar Sales Tax Act, 1947, provided that articles mentioned in the Schedule were exempt from sales tax and articles not mentioned were taxable. Item No. 6 of the Schedule stated "vegetables" and item No. 36 stated "betel leaves". Subsequently item No. 36 was deleted by an amendment of the Act. The Supreme Court held that the use of two distinct and different items, i.e., "vegetables" and "betel leaves" and the subsequent removal of betel leaves from the Schedule were indicative of the Legislature''s intention of not exempting betel leaves from taxation and it was held that the word "vegetable" must be interpreted not in a technical sense but in its popular sense as understood in the common language. It was not the botanist''s conception, but what ordinarily in matters of commerce are included thereunder should be considered as the criteria.

8. Keeping this principle in mind it would appear that at first the only entry in the field was "chemicals of all kinds". With effect from 1st April, 1960, washing materials were separately mentioned at a lower rate. This would obviously mean that even if a chemical was commercially and popularly used and known as washing material, it would be taxable under that head and not under the general head of "chemicals of all kinds". The intention of the State Government has been manifested still clearer by the notification of 1st December, 1962, where soaps, washing soaps and other washing materials have been specifically mentioned. Under entry No. 20 soaps other than washing soaps have been made taxable at 7 per cent., even though it may be a chemical and may have fallen under the original entry of "chemicals of all kinds", and under entry No. 32 washing soaps and other materials used for washing purposes were subjected to a reduced rate of tax at the rate of 4 per cent. In the context materials used for washing purposes would clearly fall within entry No. 32 even if such materials were chemicals.

9. There seems to be no doubt that Tinopal is generally used for washing textiles and clothes. This use by cloth manufacturers, by laundrymen and even in homes is for washing purposes of clothes and textiles. Washing purposes thereof would include the whitening of the clothes after or along with the cleaning of its dirt and impurity. In our opinion, Tinopal would be a material used for washing purposes within the meaning of entry No. 32 which is the special entry and consequently it will be outside the purview of the original general entry "chemicals of all kinds".

10. We would answer the question by saying that Tinopal is taxable at 4 per cent. as washing material under item No. 32 of the notification dated 1st December, 1962, and not as a chemical under item No. 4 thereof. As no one has

appeared on behalf of the assessee, there will be no order as to costs. The fee of the learned Counsel for the department is assessed at Rs. 100.

