
(1969) 01 AHC CK 0004

In the Allahabad High Court

Case No : Sales Tax Reference No's. 603 and 604 of 1965

Commissioner, Sales Tax

APPELLANT

Vs

Sarin Chemical Laboratory

RESPONDENT

Date of Decision : 29-01-1969

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1969) 24 STC 406

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

R.L. Gulati, J.—This and the connected reference submitted to this court u/s 11(1) read with Section 11(3) of the U.P. Sales Tax Act at the instance of the Commissioner by the Additional Judge (Revisions), Sales Tax, Agra, raised a common question of law arising out of assessment for the years 1956-57 and 1957-58 in respect of the same assessee. They are, therefore, being disposed of by this common order. The common question that has been submitted for the opinion of this court is :

Whether in view of the facts and circumstances mentioned above, "tooth-powder" is "cosmetic or toilet requisite" and whether the Additional Judge (Revisions) Sales Tax, Agra, was justified in treating the tooth-powder as an unspecified commodity liable to tax at all points of sale?

2. The assessee carries on the business of manufacture and sale of tooth-powder under the name and style of Sarin Chemical Laboratory at Agra. The trade name under which the tooth-powder is marketed is Sarin Dant Manjan. There is no dispute about the turnover of this commodity. The dispute relates only to the rate of tax. The assessee's contention is that the turnover of his tooth-powder is liable to tax at the rate of 3 pies per rupee u/s 3 of the Act while the Sales Tax Officer levied the rate of 0-1-0 per rupee. The Sales Tax Officer did not specify

the reason for adopting this higher rate of tax, but apparently he did so treating the tooth-powder to be a commodity taxable at single point u/s 3-A of the Act. Before the Judge (Appeals) the Sales Tax Officer stated that he had treated the tooth-powder to be an item of cosmetics falling within entry 6 of the Notification No. 905/X dated 31st March, 1956. The Judge (Appeals) held that the tooth-powder manufactured by the assessee was really a medicine and not an article of cosmetics. The Judge (Appeals) in arriving at the conclusion that the tooth-powder was a medicine was influenced by the fact that the ingredients out of which the tooth-powder was prepared were such as made it more of medicine for maintaining dental health, rather than an article of cosmetics which is meant to beautify the human body. As medicine was not one of the single point articles notified u/s 3-A of the Act, he held the turnover of the tooth-powder to fall u/s 3 of the Act which prescribes the general rate of 3 pies per rupee for all commodities.

3. The Commissioner felt aggrieved and went up in revision u/s 10 of the Act. The Additional Judge (Revisions) expressed the view that the tooth-powder manufactured and sold by the assessee was neither an article of cosmetics nor a medicine but an unspecified item and as turnover of an unspecified item is assessable u/s 3 at the rate of 3 pies per rupee, he did not interfere with the rate applied by the Judge (Appeals) and accordingly dismissed the revision application of the Commissioner. The Commissioner of Sales Tax has now come up in reference before us.

4. The short question that falls for our consideration is as to whether the tooth-powder manufactured and sold by the assessee in the trade name of Sarin Dant Manjan is an article falling within entry 6 of the Notification No. 905/X, dated 31st March, 1956, and as such is taxable at the rate of 0-1-0 per rupee.

5. u/s 3, which is the charging section, the sale of every commodity is taxable at all points at a general rate which at the material time was 3 pies per rupee. u/s 3-A, the State Government has been invested with the power to notify in the Official Gazette that the turnover in respect of any goods or class of goods shall be taxable only at a single point in the series of sales and at a rate different from the one prescribed u/s 3 subject to a maximum which at the material time was 0-1-0 per rupee. In exercise of this power u/s 3-A, the State issued Notification No. 905/X on 31st March, 1956, with which was appended a long list of items and item No. 6 whereof was "cosmetics and toilet requisites", the turnover whereof was taxable at the rate of 0-1-0 per rupee at the point of sale by the importers in the case of goods imported from outside Uttar Pradesh and at the point of sale by the manufacturers in the case of goods manufactured in Uttar Pradesh. In the instant case we are concerned with the case of a manufacturer.

6. The expression "cosmetics and toilet requisites" has not been defined in the Act. We have, therefore, to ascertain its meaning from other sources. In the Webster's International Dictionary one of the meanings assigned to cosmetic is "a preparation to beautify or alter appearance of the body or for cleansing,

colouring, conditioning or protecting skin, hair, nails, eyes or teeth." The same dictionary gives one of the meanings of "toilet" as "an act or process of dressing, especially formerly of dressing hair, and now usually cleansing and grooming of one's person." The word "toiletry" according to that dictionary, means "an article or preparation used in making one's toilet such as soap, lotion, cosmetic, tooth-paste, shaving cream, cologne, etc." According to the dictionary meaning tooth-powder can certainly be regarded both as an item of cosmetic and toilet. It is used for cleaning the teeth which is a part of the body. Apart from the dictionary meaning, the words "cosmetics and toilet requisites" have become words of everyday use, the meanings whereof are well understood. It is a matter of common knowledge that tooth-paste or tooth-powder is an essential item of toiletry in the modern life. The manufacturers of dentifrices like tooth-paste and tooth-powder invariably claim medicinal properties for their products and some of them do possess some prophylactic and remedial properties but whether they do or do not possess the medicinal properties, claimed by their manufacturers, the fact remains that they are used for dental cleanliness which is an essential act of toilet. In fact, medicinal properties are claimed even in respect of a large number of items of cosmetics such as lotions, creams, snows and powders but that does not mean that such articles cease to belong to the range of cosmetics and become medicines. The word medicine also is a word of everyday use and we all know what medicine means. Act of brushing one's teeth with tooth-paste or tooth-powder is certainly not the same thing as taking or using medicine.

7. We may now notice briefly the cases cited by the learned counsel on both sides. In *D.K. Sandu Bros. v. State of Madhya Pradesh* [1953] 4 STC 397 (MP) the Madhya Pradesh Board of Revenue held that medicated Brahmi Oil and described on the carton "as a specific for headache, burning of the eyes, insomnia, hysterical and other mental troubles, highly efficacious in falling and grey hair" was a toilet article within the meaning of item 11 of Schedule I of the C.P. and Berar Sales Tax Act, 1947. In *C.C. Mahajan and Co. Vs. The State of Bombay*, the Bombay High Court expressed the opinion that badshahi soap and badshahi powder, which are used as depilatory, were toilet articles within the meaning of entry 6 in Schedule I of the Bombay Sales Tax Act because they are used for the purposes of cleansing and grooming one's person. In *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, the Supreme Court held that the word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. Their Lordships observed that the word had not been defined in the Act and being a word of everyday use, it must be construed in a popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It was held that the term "vegetables" should be understood as denoting that class of vegetables which are grown in a kitchen garden or in a farm, and are used for the table. Consequently "betel leaves" could not be regarded as vegetables as it was sought to be exempted under item

6 of Schedule II of the C.P. and Berar Sales Tax Act. Other cases cited at the Bar related to such articles as plastic safety-razors, safety-razors and hairpins etc. These articles were held not to be articles of cosmetics or toilet requisites. It is not necessary to notice them in detail as they do not throw much light on the question before us.

8. There are two cases, however, which deal directly with tooth-powder. The first is that of the Madras High Court in V.P. Somasundara Mudaliar Vs. The State of Madras, There the question before the Madras High Court was as to whether tooth-powder would come within the scope of item 51 of the First Schedule of the Madras Sales Tax Act which was in the following words:

Scents and perfumes, powders, snows, scented hair oils, scented sticks, cosmetics and toilet requisites, except soap.

9. Applying the principle of *ejusdem generis*, the court held that tooth-powder could not be included in the kind of goods enumerated in item No. 51 of the First Schedule because tooth-powder was mostly used for cleaning and not for enhancing beauty. In the opinion of the learned Judges of the Madras High Court the other articles mentioned in entry 51 were such as were intended to make up or enhance beauty of a person. This case is easily distinguishable because of the peculiar composition of entry 51.

10. The other case dealing with tooth-powder is of Commissioner of Sales Tax Vs. Vicco Laboratories, In that case the Bombay High Court held that Vicco Vajradanti, a dentifrice in the form of powder used for cleaning teeth was an article of toilet. The learned Judges observed that the word "toilet" as used in Schedule B to the Bombay Sales Tax Act should be construed in the popular sense in which it is understood generally. This is an authority which directly supports the view we have taken.

11. A considerable part of the argument before us related to the question as to whether the principle of *ejusdem generis* should be applied to the instant case. In our opinion, it is not necessary to enter upon that question for two reasons. In the first place tooth-powder, in our opinion, would fall within the scope of both the expressions, viz., "cosmetics and toilet requisites". Secondly, there are other circumstances which point almost conclusively to the true sense in which this expression has been used by the framers of the notification so as to render it unnecessary to invoke the aid of any principle like *ejusdem generis*. The intention is very clearly brought out by the history of the entry in question. "Cosmetics and toilet requisites" were brought under the purview of Section 3-A for the first time by Notification No. ST-369/X-923-48, dated 1st July, 1948. In that notification entry No. 10 read "cosmetics and toilet requisites (other than soaps)". The rate of tax on the turnover of cosmetics and toilet requisites as classified in that notification was 9 pies per rupee. Soap, which is clearly an item of cosmetics and toilet requisites, was excluded because the same had already been placed u/s 3-A under the notification of 8th June, 1948, taxable at a lower

rate of 6 pies per rupee. This was followed by the notification of 31st March, 1956, which is the notification in question. Then came the notification of 1st April, 1960 (Notification No. ST-1365/X-990-1956). In that notification cosmetics and toilet requisites were placed at item No. 3. The rate of tax was fixed at 6 paise per rupee. Soap other than washing soap was placed separately at item No. 20 and was made taxable also at the rate of 6 paise per rupee. Thereafter there are several notifications relating to cosmetics and toilet requisites as also relating to soap. The rate of tax was finally raised to 10 paise per rupee in the case of cosmetics and toilet requisites while the rate of tax on soap was raised to 7 paise per rupee. Finally, we come to the two notifications issued on 1st November, 1966. By the first notification [ST-5621/X-900 (54)/65], the entry relating to "cosmetics and toilet requisites" was changed to "cosmetics and toilet requisites excluding tooth-pastes, tooth-powders and other dentifrices" taxable at the rate of 10 per cent. Under the second notification [ST-5621-A/X-900 (54)/65], tooth-paste, tooth-powder and other dentifrices were listed as a separate item taxable at the rate of 6 per cent. The result of these notifications was that cosmetics and toilet requisites other than tooth-paste, tooth-powder and other dentifrices were taxable at 10 per cent, while tooth-paste, tooth-powder and other dentifrices etc. were subjected to a lower rate of 6 per cent.

12. From the sequence of the notifications referred to above, it is perfectly obvious that tooth-paste, tooth-powder and other dentifrices were all along included in the expression "cosmetics and toilet requisites" until they were separated on 1st November, 1966, and subjected to a different rate.

13. "Scents and perfumes" is another obvious item of cosmetics but this also has been appearing separately in the various notifications issued from time to time as the rate of tax on these articles has been different like the rate on soap other than washing soap. One of the arguments of the learned counsel for the assessee was that because soap (other than washing soap) and scents and perfumes were listed separately, we should give a restricted meaning to the entry relating to cosmetics and toilet requisites. This argument has no force in view of what we have stated above. Soaps, scents and perfumes were separately listed because they were subjected to different rates. It is obvious that the intention of the framers of the notifications was to include all articles in the expression "cosmetics and toilet requisites" as are popularly regarded as articles falling within that category but such of those articles as were intended to be taxed at different rates, were separated and listed separately.

14. In the end we might add that even the manufacturers of dentifrices like tooth-paste and tooth-powder regard them as items of cosmetic and toiletry. For example, Ciba is a well-known concern engaged in the manufacture of pharmaceuticals and cosmetics. They have divided their various products into separate divisions like pharmaceuticals, cosmetics and pesticides. They have placed their well-known Binaca tooth-pastes in the cosmetics division and not in the pharmaceutical division even though they claim medicinal properties for the

different varieties of their tooth-pastes. This shows that in the commercial world dentifrices like tooth-pastes and tooth-powders are regarded as items of cosmetics and toilet requisites.

15. We are, therefore, of the opinion that the tooth-powder in question is an article of cosmetics or toilet requisites falling with item 6 of Notification No. 905/X dated 31st March, 1956, and we answer the question accordingly.

16. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 50 in each case and the fee of the learned counsel for the department is also assessed at the same figure.