(1995) 01 OHC CK 0020

In the Orissa High Court

Case No : O.J.C. No''s. 2068, 2204 and 2205 of 1994

Dabur India Ltd. APPELLANT

Vs

Commissioner of Sales Taxs and Others RESPONDENT

Date of Decision : 12-01-1995

Acts Referred:
Drugs and Cosmetics Act, 1940 — Section 3

Citation : (1995) 1 OLR 264

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Y. Das, N.C. Mohanty and A.N. Patnaik, for the Appellant; Sr. Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—These three writ applications involve a common dispute and therefore, are disposed of by this judgment which shall govern each one of them. For the assessment years 1990-91-1991-S2 and 1992-93 Petitioner has been assessed to extra demands of sales tax by the Sales Tax Officer Cuttack-(II) Circle Cuttack. For the assessment years 1990-91 and 1991-92 assessments originally completed u/s 12(4 of the Orissa Sales Tax Act, 1947 (.in short, the ''Act) were re-opened and re-assessments u/s 12(8) of the Act have been made, while for the assessment year 1992-93, assessment has. been made u/s 12(4) of the Act. The assessing officer was of the view that "Lal Dantamanjan" (Red tooth powder) sold by petitioner is to be taxed as non-classified item '' 12%, instead of 4% as claimed by the petitioner. Undisputedly, petitioner based its claim on SI. No. 37 of the Rates of Sales Tax as notified under Notification No. 21957-CTA-98/90-F., dated 30.6.1990, while Revenue rested its case on entry No. 105 which is residuary in nature and relates to "All other articles". Since applicability of entry No. 37 is to be determined in the case at hand, it is necessary to extract the same, it reads as follows :

"37. Drugs as defined in Clause (b) of Section 3 of the Drugs and Cosmetic Act, 1940 (Act 3 of 1940) and Ayurvedic, Homoeopathic and Unani medicines-Four per cent "

According to the assessing officer with effect from 21-4-1993 in terms of Notification No. 18675-CTA-6793 F., dated 14- 4-1993, "Ayurvedicv,.''ic, Homoeopathic and Unani Medicines" were included and therefore, prior to 21-4-1993, entry 37 had no application to the article under consideration. Placing reliance on a decision of apex Court in Ishwar Singh Bindra and Others Vs. State of U.P., (wrongly mentioned as 1454 in the assessment orders) the assessing officer held that Ayurvedic, Homoeopathic and Unani medicines were not covered by Section 3(b) of the Drugs and Cosmetics Act. 1940 (in short, the ''Drugs Act'') and therefore, stand of the assess was not tenable. Though orders of assessment are available to be assailed in appeals, a Bench of this Court while admitting these cases made it clear that since a point of law was involved, and similar disputes are likely to arise in large number of cases, with a view to reduce unnecessary litigation, writ applications were being admitted.

2. Mr. Y. Das, learned counsel for petitioner submits that the view taken by the assessing officer is clearly untenable, because he referred to a decision of apex Court which has no application to the facts of the case as it related to the position prior to amendment of Section 3(b) of the Drugs Act by Act 13 of 1964 At that point of time, in Clause (b) Unani medicines were specifically excluded from definition of medicines, drugs. It is submitied that before manufacturing "Lal Dantamanjan", petitioner is obliged under the Drugs Act to take licence for its manufacture, and its main use is for medicinal purpose. Certificates issued by the authorities under the Drugs Act along with an affidavit have been filed. These Prima facie, according to him, show that manufacture of "Lal Dantamanjan" was controlled by the Durgs Act and without requisite licence its manufacture is prohibited. Mr. Ashok Mohanty, learned counsel for the Revenue on the other hand, submitted that primary use of "Lal Dantamanjan" is for teeth censing purpose, and even if it has minimal medicinal qualities, it cannot be treated to be covered by Clause (b) of Section 3 of Drugs Act. With reference to view expressed by apex Court in Sarin Chemical Laboratory Vs. Commissioner of Sales Tax, U.P., it is submitted that tooth powder is essentially a toilet product and cannot be called a medicine to be covered under Clause (b) of Section 3 of the Drugs Act.

3. In our view, an article which is covered by expression "Drugs" as defined in Clause(b) of Section 3 of the Drugs Act would be taxable at 4%. We do not consider it necessary to deal with the question whether expression "Ayurvedic, Homoeopathic and Unani medicines'''' as added with effect iron Ti 21-4-1993 were intended to be clarificatory in nature. That is an academic question so far as the present case is concerned. If product is covered by the unamended entry, tax ate would be 4%. The decision in Iswar Singh Bindra''s case (supra) was rendered at a point of time, when Section 3(b) of the Drugs Act read as follows :

"all medicines for Internal or external use of human beings or animals and all substances intended to be used for or (in the diagnosis, treatment. mitiogation or pevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic and Unani systems of medicine "

A number of amendments were made by Act XII of 1964. In Clause (i) the words "other than medicines and substances exclusively used or prepared for use in accordance with Ayurvedic or Unani system of medicine were deleted. After amendment. Clause {b) of Section 3 read as follows:

"all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repellidg insects like mosquitoes ;

The definition of "drugs" is comprehensive enough to take in not only medicine, but also substances intended to be used for or in the treatment of diseases of human beings or animals. The expression ''substances'', therefore, must be something other than medicines but which are used for treatment. The definition of "drugs" as given in Clause (b) is an inclusive definition. It takes within its ambits all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, , mitigation or prevediion of disease in human beings or animals. After amendment made in Section 3(b) of the Drugs ''Act by Amendment Act of 1984, the expression ''''drug" iucludes also the medicines and substances which are either used or are prepared in accordance with the Ayurvedic or Unani system of medicine. The word "medicine'''' has not been statutorily defined, and as such the meaning given in common parlance has to be attributed to it A medicine is a substance or preparation used in the treatment of diseases. The substance must have curative power so as to iX-mak it effective for treatment of ailments. A substance which has a curative power need not be used in the very form in which it normally occurs. The concept of medicine is not static. It is a changing concept linked with the advancing human knowledge and its endeavour to alleviate human suffering. According to Dorland''s Medical Dictionary, ''''Medicine" means any Drug or remedy, the art and science of the diagnosis and treatment of disease and maintenance of health, the non-surgical treatment of disease. According to the said dictionary, "drug" means any medicinal substance. According to Webster''s New Twentieth Century Dictionary the word "medicines" has five meanings but the appropriate and relevant in the context and circumstances of this case is; "any drug or other substance used in treating disease, healing or relieving psin, a drug or other substance as a poison, love potion etc used for other purposes". In the Oxford English Dictionary, one of the meanings given is "medicament esp. are taken internally, also, medicaments generally" In Cor Jur Sec 57, at pase 1042, there appears the following instructive passage on the meaning of the word ''medicine'' ;

"Medicine. A technical and generic term, derived from ''meder''. It has frequently been defined by eminent lexicographers of medical words and terms, and is susceptible of two distinct meanings;

in one sense the word signifies a science or profession, and this meaning is treated in the CJS title Physicians and Surgeons.........

In its other distinctive sense, the word signifies a drug, indicating nothing more than a remedial agent that has the property of curing or mitigating diseases, or is used for that purpose, and in its ordinary sense, as applied to human ailments, it means something which is administered, either internally or externally in the treatment of disease or the relief of sickness. In this sense the word ''medicine'' is variously defined as a remedial agent; a remedy; a physic; and medicament; any substance or preparation used in treating disease; articles intended for use in the diagnosis, cure, medication, treatment, or prevention of disease in man or other animals; a substance supposed to possess curative or remedial properties; a combination of drugs in largely varying proportions."

It is thus clear that word "medicine" is susceptible of two distinct meanings and that in its ordinary sense as applied to human ailments, it means something which is administered either internally or externally in the treatment of disease or the relief of sickness. It is now well settled that the names of articles, sales as well as purchases of which are liable to be taxed given in a statute, unless defined in the statute, must be construed not in a technical sense but as understood in common parlance. In its popular sense, ''medicine'' is a remedial substance which may be sold in various forms such as liquid, table''s capsules or powder, which is administered in the treatment of disease and which has the property of curing or remedying disease. This meaning also accords with the dictionary meaning referred to above If this is the true meaning of ''medicine'', in popular parlance, many articles which may not be medicine technically, or strictly so called, would be covered by the wide ambit of the word ''medicine''.

Drugs Act controls the import, manufacture, distribution and sale of drugs or cosmetics. in Section 3(b) it describes ''drug'' as including all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals. Section 18 of this Act requires a person not to manufacture for sale, or sell or stock of exhibit for sale or distribute any drug except in accordance with the conditions of a licence is used for the purpose. Rules have been framed by the Central Government for the purpose of giving effect to the provisions of Chapter, in which occurs Section 18, in exercise of the powers u/s 33 of Drugs Act and Rule 61(2) of the Drugs and Cosmetics Rules, 1945 (in short. ''Rules''), so framed provides for a licence to sell or exhibit for sale or distribute drugs specified in Schedules C and C(1) by retail. Schedule C, forming part of these Rules mentions amongst others (at Item No. 12), "any other preparation which is meant for parenteral administration as such or after being made up with a solvent or medicum or any other sterile product........"

The assessing officer''s conclusions had their foundation on the view expressed by apex Court in Ishwar Singh Bindra''s case (supra). In view of amendment in 1964, the position has substantially and materially been changed. The amendment and its effect was not considered.

4. Learned counsel for the Revenue submitted that in view of decision of apex Court in Sarin Chemical Laboratory''s case (supra), assessing officer was justified in rejecting petitioner''s claim. The said decision was rendered on the question whether tooth powder is a toilet product. The Court was not concerned with the question whether product was covered by Section 3(b) of Drugs Act. According to learned counsel for the Revenue Madras High Court in V P. Somasundara Mudaliar v. State of Madras 1961 4 STC 943 MAD held that medicinal qualities of tooth powder were minimal and therefore it has to be held that no tooth powder can be cove red by Section 3(b) of Drug Act. We find no substance in this plea for the simple reason that a decision is an authority for what it decides on the facts of a particular case and not what incidentally or consequentially flow it. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions; but they are meant to explain and not to define. Lord Morris said in Herrington v. British Railways Board 1972 2 WLR 537 that there is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The question whether product with which which we are concerned is covered by Section 3(b) of Drugs Act was not under consideration of apex Court; even incidentally. Another interesting feature is that the assessing officer has stated that prior to 21-4 1994 product cannot be treated to be an Ayurvedic medicine. In other words, he accepted that product is Ayurvedic medicine, but prior to amendment effective from 21- 4- 1993, it is not covered by Entry 37 of list of taxable goods Nature of user of particular product, and its principal usage have to be factually adjudicated. Effect of licence being required to be taken under another statute also throws light on the nature of the product, and is a relevant factor.

5. In the circumstances, we set aside the order of assessment in each case, and direct the assessing officer to re-do the assessment. Petitioner is free to place materials which according to it are relevant in support of its claim before the assessing officer. It is brought to our notice that while intending to tax "Lal Dantamanjan" at the higher rate, transactions relating to other Ayurvedic medicines dealt with by the petitioner have been subjected to tax at the higher rate under residuary item. This appears to have been done with the view that prior to 21-4-1993 all Ayurvedic medicines fell outside the purview of Entry 7. The matter shall be re-examined keeping in view the observations made supra. To avoid unnecessary delay, petitioner is directed to appear before the assessing officer on 24-2-1995, without any further notice so that a date of hearing can be fixed by the assessing officer. He would do well to complete the assessments by

the end of July, 1995.

The writ applications are allowed. No costs.

P.C. Naik, J.

6. I agree.

