(1969) 02 AHC CK 0005

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 614 and 615 of 1965

Har Narain Purshottam Dass — APPELLANT

Vs

Commissioner, Sales Tax — RESPONDENT

Date of Decision : 11-02-1969

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

Citation : (1971) 28 STC 77

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

Bench : Division Bench

Advocate : B.L. Gupta, Ashoke Gupta and J.P. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Pathak, J.—The assessee deals in colours and chemicals purchased from Uttar Pradesh and ex-Uttar Pradesh markets. It also sells imported Tinopal. In assessment proceedings under the U.P. Sales Tax Act for the assessment years 1958-59 and 1959-60 the Sales Tax Officer treated Tinopal as a chemical and accordingly taxed the turnover of Tinopal at the rate of one anna per rupee. The assessee appealed against the assessment orders and contended that Tinopal was not a chemical and was liable to tax at the rate of three pies per rupee. The plea was accepted by the Judge (Appeals) Sales Tax and the appeals were allowed. The Commissioner of Sales Tax applied to the revising authority for the revision of the appellate orders, and the Additional Judge (Revisions) Sales Tax set aside the appellate orders and restored the assessment orders. At the instance of the assessee this and the connected reference have been made on the following question :

Whether Tinopal is a chemical liable to tax at one anna per rupee or is liable to tax at 3 pies per rupee as being an unspecified article ?

2. u/s 3 of the U.P. Sales Tax Act the turnover of all goods was liable to tax, at

the relevant time, at three pies per rupee at every point of sale. Section 3-A of the Act empowers the State Government to make a notification declaring that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify, and power has been given to the State Government to further declare the rate at which that turnover shall be liable to tax. u/s 3-A the State Government made Notification No. ST-905/X dated 31st March, 1956, declaring that the turnover of "chemicals of all kinds", among other commodities, would be liable to tax at the rate of 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. The question before us is whether Tinopal falls under the entry "chemicals of all kinds" in that notification. If it does, it will be liable to tax at the rate of one anna per rupee. If not, it will be liable to tax at the rate of three pies per rupee.

3. The Additional Judge (Revisions) has referred to the contents of a booklet issued by Suhrid Geigy Trading Limited, who manufacture and sell Tinopal in India. The booklet mentions that bleaching, in principle, is the removal of natural impurities and dirt by means of oxidizing and reducing agents and that chemical bleaching though giving a whiteness to the fabric is attended with a certain degree of yellowing. To correct the yellowish cast of chemically bleached material, without noticeably lessening the brightness of the white, optical agents are employed. Optical whitening agents have been described in the booklet as "fluorescent organic compounds which exhaust on to the fibre like dye-stuffs". It says:

Thus a fabric treated with an optical whitening agent reflects more visible light than one not so treated. It has a degree of whiteness which is considerably more intense and against which material bleached and blued in the traditional manner appears dull and dingy.

4. It then says that Tinopal brands are optical whitening agents of varying chemical structure, giving a wide range of white shades from greenish blue to violet. In the section devoted to "Uses of Tinopal Whitening Agents", it mentions that Tinopal brands are mainly used to improve the whiteness of bleached textiles, and where the final shade is particularly important and cannot be obtained with one of the Tinopal whitening agents, a combination of Tinopal brands with the usual blue dyes may be used. In dyeing, Tinopal whitening agents, the booklet points out, are useful for improving pastel shades, and can be added to the dye-bath in the normal way and give considerably purer shades especially when viewed in daylight. It also says that Tinopal whitening agents can be applied to white or coloured goods in the final finish and in resin dispersions. Fabrics containing white effect threads can be much improved, it is said, 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. In

printing, the white ground of the fabric can be appreciably brightened by preliminary or after-treatment and contacts are intensified by adding Tinopal to the discharged paste. It is further pointed out that the discharged pattern can be brightened by adding Tinopal to the after-treatment bath or rinse or to the finish. As regards the affinity of Tinopal whitening agents, the booklet states, that "Tinopal whitening agents exhaust on to the fibre like dye-stuffs". From all this one receives the definite impression that Tinopal is used as a chemical agent. It is used because of its chemical properties. This is the version put out by the manufacturer itself as regards the properties and uses of Tinopal for the information of the consumer public. In the absence of any other material on the record on the point, we may take it that what the manufacturer represents the product to be capable of achieving is what influences the consumer to buy it. It is difficult to say that the consumer looks upon Tinopal as anything else. Certainly, there is no material on the record to come to any other conclusion. The test is, as a Full Bench of this Court observed in Avadh Sugar Mills Ltd. v. Sales Tax Officer [1968] 21 S.T.C. 295:

...a word used in a taxing provision, such as the Sales Tax Act, should be assigned the meaning which it has received in the commercial circles. There is good practical sense behind these principles. Words are signals invented by a society to facilitate the communication of ideas and things between the signaller at one end and the receiver at the other end. The gradual acquisition of a conventional meaning is necessarily inherent in the social (or group) purpose of their invention. The interpreter should therefore give due emphasis to the social setting of a word. The real meaning often is wrapped up in the sociology of a word.

5. It is the sense in which the mercantile community and the consumer public understand the commodity to be. It was urged that Tinopal is not a chemical but can be properly described only as washing material. Now, a chemical may also be used as a washing material, and the mere circumstance that it is possible to distinguish Tinopal as washing material, respecting which I express no opinion here, cannot take it out of the category of "chemicals of all kinds".

6. In my opinion, upon the aforesaid considerations, Tinopal falls under the entry "chemicals, of all kinds" in the notification dated 31st March, 1956.

7. I would answer the question accordingly and assess the costs of the Commissioner of Sales Tax at Rs. 100. Counsel''s fee is also assessed in the same figure.

Gulati, J.

8. I have perused the judgment prepared by my brother Pathak and I agree with the answer proposed by him to the question referred to us, but I would like the answer to be confined to the assessment years in question only.

9. Tinopal is an article of every day use, its main use being in the laundry. In the

popular sense it is a washing material. It is, of course, described by its manufacturer as a whitening agent, but whitening is also one of the main purposes of washing clothes. It is in evidence that the manufacturers of Tinopal have got it patented as an article used by dhobis and washermen. 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. With effect from 1st April, 1960, washing materials were separately listed in another notification u/s 3-A of the Act but until then Tinopal can very well be regarded as a chemical. 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 in question, which are 1958-59 and 1959-60, there was no separate classification of washing material and, therefore, Tinopal would be covered by the entry "chemicals of all kinds".

By the Court

10. For the reasons contained in our respective judgments, we are of opinion that in respect of the assessment years 1958-59 and 1959-60, Tinopal would be a chemical liable to tax at the rate of one anna per rupee.