
(1993) 02 GUJ CK 0004
In the Gujarat High Court
Case No : Sales Tax Reference No. 4 of 1989

Haran D. Manufacturing Co.	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 17-02-1993

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 43, 69

Citation : (1993) 02 GUJ CK 0004

Hon'ble Judges : M.B. Shah, J;C.V. Jani, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Y.F. Mehta, Assistant Government Pleader, instructed by H.V. Chhatrapati and Co., for the Respondent

Judgement

C.V. Jani, J.—The Gujarat Sales Tax Tribunal, Ahmedabad, has referred the following two questions for the decision of this Court u/s 69 of the Gujarat Sales Act, 1969, hereinafter referred to as "the Act".

"(1) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that what was manufactured and marketed by the applicant was not soap but detergent, is perverse, being contrary to the evidence produced in the case and contrary to the principles of natural justice ?

(2) If answer to the above question is in the negative, i.e., against the applicant, whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that "detergent" is not one kind of soap and hence not covered under entry 34 of Schedule II, Part A to the Gujarat Sales Tax Act, 1969, but covered under entry 13 of Schedule III thereof ?"

2. The aforesaid questions arise in the following factual background :

(i) The applicant Messrs. Haran D. Manufacturing Co. is a partnership firm and a dealer registered under the Act,, engaged in manufacture and sale of soaps. While assessing the applicant for samvat year 2032 corresponding to the period from November 4, 1975 to October 23, 1976 and samvat year 2033

corresponding to the period from October 24, 1976 to November 11, 1977, the concerned Sales Tax Officer considered the applicant's product as "soap" covered by entry 34 of Schedule II, Part A to the Act, and applied the rate of 5 per cent for the purpose of calculating sales tax dues. Before August 1, 1977, the relevant entry 34 read as under :

"34. Soaps (excluding shampoo) Taxable at five paise in the rupee." As per amendment effected from August 1, 1977, the said entry reads as under :
"34. Soaps and detergents Taxable at six paise in the (excluding shampoo) rupee."

Thus, before August 1, 1977, detergents were not specifically included in entry 34.

(ii) On scrutiny of these assessments the Assistant Commissioner of Sales Tax (Administration-cum-Appeals), Circle VIII, Rajkot, was prima facie of the view that the said turnovers of sales were not in respect of "soap" but of "detergent" which would fall under residuary entry 13 in Schedule III of the Act attracting higher rate of tax. In the view of the Assistant Commissioner the products lacked essential raw materials, namely, oil and caustic soda required for the manufacture of soaps, and that acid slurry, silicate, sulphate, stone soap powder used for manufacturing the said product were raw materials in the manufacture of detergent. The Assistant Commissioner, therefore, issued a notice in form No. 45 for appearing before him with the requisite accounting materials. The applicant appeared with the requisite materials. It was found that in so far as the period of samvat year 2032 was concerned, consumption of oil and fatty acids taken together was of 5,462 kilograms out of the total consumption of different raw materials weighing 4,95,979 kilograms. In samvat year 2033 the consumption of oil was found to be nil; while that of fatty acid was 280 kilograms only, out of the total consumption of the raw materials weighing 4,65,507 kilograms. On perusal of the account books and the sale bills as well as the advertisement published by the applicant, the Assistant Commissioner was prima facie of the view that what was sold by the applicant during the relevant periods was "detergent" and not "soap". He, therefore, issued the requisite notice for revision of the assessment on the disputed turnover, and also for levying penalty under sub-section (6) of section 43 as a result of the proposed revision. The dealer made oral and written submissions and relied on the judgment of the Bombay High Court in C.C. Mahajan and Co. Vs. The State of Bombay, , and also another judgment of the Tribunal itself. However, the Assistant Commissioner held that the products sold by the dealer hardly contained 1 per cent of oil or fatty acids, and, therefore, the product could not be said to fall under the term "soap". He revised the assessment and imposed penalty of Rs. 16,492 for samvat year 2032, and penalty of Rs. 11,937 for the earlier part of samvat year 2033 before amendment of the entry.

(iii) The assessee, therefore, filed two revision applications before the Tribunal in respect of the two different assessments. Both the revision applications involved

identical points of facts and, therefore, they were heard together and disposed of by a common judgment by the Tribunal.

(iv) The Tribunal was of the view that the fat and fatty acids and caustic soda were essential raw materials for the formation of soap and the applicant's products which lacked the basic raw materials of oil and fatty acids could not be termed as soap. The Tribunal, therefore, confirmed the reassessment, but set aside the orders of penalty on the ground that the applicant was labouring under a bona fide belief that what was sold by it was "soap" and it paid the tax accordingly.

(v) The applicant thereafter filed two different applications numbering 30 and 31 of 1988 for referring the aforesaid two questions for the decision of this Court. The Tribunal held that these questions were questions of law which deserved reference to the High Court.

3. It cannot be ignored that entry No. 34 of Schedule II, Part A was specifically amended with effect from August 1, 1977, to bring within its purview "detergent" also, to set at rest the controversy and the meaning of the term "soap". This amendment cannot be the basis for a submission that "detergent" were not included in the term "soap" before August 1, 1977.

4. Mr. R. D. Pathak, learned advocate appearing for the applicant-dealer, has taken us through the relevant documents on record, namely :

(i) Annexure 6(2) referring to the variety of excisable goods to be manufactured as "Haran (Laundry soap)" in an application for licence to the Superintendent of Central Excise, Rajkot;

(ii) Annexure 9 being a copy of an order placed by M/s. Shashikant Bros. of Godhra for 200 boxes of "Haran D. Soap";

(iii) Annexure 11 being the copy of the bill issued by M/s. Naranbhai Darjibhai of Bulsar, returning 27 cartons of "Haran D. Soap" worth Rs. 3,024.

(iv) Annexure 12 - Copy of the receipt issued by the Rajkot Municipal Corporation in respect of two boxes of "Haran D. Soap";

(v) Annexure 13 being a copy of a bill issued by Mahavir Sales Agencies, Ahmedabad, in respect of 22 boxes plus 3 1/2 boxes of "Super Haran D. Soap" issued to Anita Agencies, Rajkot;

(vi) Annexure 14 - A copy of the bill issued by M/s. Ratilal Somachand of Petlad, in respect of "Haran D. Soap" worth Rs. 3,580.50.

(vii) Annexures 15 and 18 - Copies of the advertisement given in newspaper in respect of "Super Haran D. Soap";

(viii) Annexure 17 - Copy of the letter addressed by M/s. Babulal Jitendrakumar Shah of Amroli to the applicant soliciting direct supply of boxes of "Haran D. Soap" and washing powder, and inquiring about the terms and conditions and

directions.

Mr. Pathak submitted that the product sold by the applicant-dealer was known as soap in popular parlance and by the trading community. He, therefore, submitted that the real test for determining whether the product of the applicant is "soap" does not involve the comparison and determination of the ingredients of the product, but the predominant use to which it is put by the consumers. He further submitted that the entry itself was amended in order to include such products within the fold of "soap" with effect from August 1, 1977, which also reflected the intention of the Legislature.

5. As against this, it was vehemently submitted by Mr. Y. F. Mehta for the State that the raw materials used by the manufacturer in samvat year 2033 totally weighing 4,65,507 kilograms included fatty acid weighing only 280 kilograms of oil. As per the booklet entitled "Cottage Industries" written by Shri Chandrakant Pathak, the provision of oil in the production of manufacturing soap should be 50 per cent or more. Hence according to Mr. Mehta, the products sold by the applicant-dealer could by no stretch of imagination be said to be "soap", and therefore, they would fall under residuary entry 13 of Schedule III to the Act, attracting higher rate of sales tax at 8 per cent. Mr. Mehta submitted that the words "soaps" and "detergents" are being used really in their scientific and technical sense and they are understood as such by the consumers and retail traders. Hence, according to Mr. Mehta both the questions are required to be answered in the negative.

6. As a matter of fact, it cannot be disputed that the products "Haran D. Soap" sold by the applicant contains a negligible percentage of oily substance and so, it does not contain soap base as submitted by Mr. Mehta. The soap itself is a chemical compound or a mixture of chemical compounds and it is specifically used for washing or cleaning. The question is whether the applicant's product would not be understood as a washing or cleaning agent simply in view of the fact that it does not contain fatty oils as one of its constituents. We are inclined to take the view that the term "soap" is understood by the consumers as well as by the traders from its functional aspect. Though an attempt is made to define "soap" in Encyclopaedia Britannica as a chemical compound or mixture of chemical compounds resulting from interaction of fatty oils and fats with alkali, i.e., the salts of fatty acids, functionally, it is understood as a substance possessing the characteristic "soap-like" properties of sudsing, detergency, surface tension, lowering, wetting and emulsifying power, and curd and gel formation. It is also mentioned in this note regarding "soap" that functional consideration of soap brings within its scope synthetic detergents.

7. In C.C. Mahajan and Co. Vs. The State of Bombay, the Bombay High Court held that the product sold in the market as Badshahi soap was not really a soap under the relevant entry of the Bombay Sales Tax Act, 1946 and that it is only the character of the article that attracts the tax and not the name by which it is known in the market. In the facts of the case it was held that absence of fat in

the preparation of "Badshahi soap", which was intended to be used as a depilatory, could not make it a cleansing agent. The test therefore accepted by the Bombay High Court was whether the product in question could be used for the purpose of cleansing and not whether the particular ingredient was present in the manufacture of that product.

8. In *State of Gujarat v. Prakash Trading Co.* [1972] 30 STC 348 (Guj) the Supreme Court held that shampoo was a kind of liquid soap. It was held that the proportion of ingredients of the liquid soap differed from those of a soap in the form of a cake, but this itself would not alter the basic character of shampoo. This was with reference to entry No. 28 of Schedule C to the Bombay Sales Tax Act, 1959.

9. In *Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh*, the Supreme Court followed the well-settled test that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, resort should be had not to the scientific and technical meaning of the terms or expressions used, but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it was defined, but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.

10. In *Collector of Central Excise v. Krishna Carbon Paper Co.*, the Supreme Court reiterated the same test and held that where no definition is provided in the statute itself, for ascertaining the correct meaning of a fiscal entry, reference to a dictionary meaning is not always safe, and so the correct guide in such a test would be the context and the trade meaning. It was also observed that where a particular word has a scientific or technical meaning and also an ordinary meaning according to the common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. The same principles were reiterated in *Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay*, .

11. In the instant case, the term "soap" is not defined in the Act. The product sold by the applicant-dealer was known as "soap" in the particular trade, and it was also used by the consumers as a soap for washing the clothes. The true meaning of this term in the popular parlance would be flowing from its predominant use. We, therefore, hold that in interpreting the term "soap" the real test would be functional test or the test of predominant user, and there is no reason to exclude "detergent" soap" from the meaning of the term "soap".

12. Perhaps the Tribunal itself was conscious about this aspect and while considering the question whether penalty should be imposed, the Tribunal was of the view that the distinction between a soap and a detergent is a fine one and when both those commodities had practically the same use one was likely to be

misled in treating both of them at par with each other. We have, therefore, no doubt that the product manufactured and sold by the applicant-dealer would be covered by the entry 34 of Schedule II, Part A to the Act and not under residuary entry 13 of Schedule III thereof.

13. We, therefore, answer question No. 2 in the negative, and against the Revenue. In that view of the matter the question No. 1 does not survive and is not answered.

14. There will be no order as to costs in the circumstances of the case.

15. Reference answered accordingly.