(1980) 07 OHC CK 0014

In the Orissa High Court

Case No : S.J.C. No''s. 54 and 55 of 1976

Kamaru Zuman Khan — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 16-07-1980

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1980) 50 CLT 440

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : S.C. Mohapatra, for the Appellant; The Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—These are references u/s 24(1) of the Orissa Sales Tax Act. The Additional Sales Tax Tribunal has stated these cases and has referred the following question for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Additional Sales Tax Tribunal is correct in holding that agarbattis should be taxed as ''perfumery'' article coming under the purview of entry in serial No. 36 of the Rate Chart provided for taxing luxury goods, when he recorded a specific finding that agarbattis are not luxury goods ?

2. Section 5 of the Orissa Sales Tax Act contains the scheme under which there is a uniform prescribed rate for imposition of tax on the taxable turnover. The proviso appearing under Sub-section (1) authorises the State Government from time to time by notification and subject to such conditions as may be imposed to fix a higher rate of tax not exceeding thirteen per cent or a lower rate of tax on the sale transactions. The assessee in the instant case is a dealer in agarbattis. The relevant periods of assessment are 1971-72 and 1972-73. Petitioner paid tax at the rate of seven per cent for three quarters of the first year and at eight per cent for the rest of the period in question. Initially the returns had been accepted but the Sales Tax Officer found that there had already been a change in the entry

in the schedule and the assessments were, therefore, reopened on the plea that there was under-assessment. The entry at the beginning of 1971-72 read thus:

Perfumery, cosmetics, pomades and all toilet articles including toilet soaps are to be taxed at 7 per cent.

This schedule was omitted by notification dated 16th June, 1971, and with effect from 1st July, 1971, perfumery was taken to the category of luxury goods and was tagged as entry 36 in the schedule meant for luxury goods. The assessing officer levied tax at 12 per cent in terms of the prescribed rate. The Assistant Commissioner was of the view that agarbattis do not come within the articles of perfumery and, therefore, would not be luxury goods. He relied upon a Bench decision of the Punjab and Haryana High Court in the case of Assessing Authority, Amritsar v. Amir Chand Om Parkash [1974] 33 S.T.C. 120 in preference to a decision of the Supreme Court in the case of Commissioner of Sales Tax, U. P. v. Indian Herbs Research and Supply Co. [1970] 25 S.T.C. 151 (S.C.) and vacated the assessments. The State appealed to the Tribunal and the Tribunal set aside the appellate decisions and restored the assessments.

3. At the hearing of these applications, counsel for the assessee indicated to us that within the ambit of the advisory powers of this Court u/s 24 of the Sales Tax Act, it may not be open to us to decide whether agarbatti would be perfumery and hence an item of luxury goods and, therefore, was inclined to suggest that we should leave the matter unanswered and the assessee could move this Court under Article 226 of the Constitution. We have not been able to appreciate the submission. In deciding whether agarbatti constitutes luxury goods, no law is under challenge and this Court in its advisory jurisdiction can certainly examine the question.

4. Though agarbatti has not been specifically included in the notification, perfumery has been included as luxury goods and is tagged to entry 36 in the schedule of luxury goods. The material question for determination, therefore, is whether agarbatti is perfumery. The Supreme Court decision [1970] 25 S.T.C. 151(S.C.) directly dealt with this question. Whether "perfume" in its ordinary sense would cover dhoop and dhoop-batti was the question for consideration and the learned Judges held that dhoop and dhoop-batti fell within the category of "perfume". There can be no argument that "perfume" and "perfumery" are different classifications. If agarbatti is "perfume", it would be covered under the classification of "perfumery" included in the Orissa Act as item of taxable luxury goods and the Supreme Court decision [1970] 25 S.T.C. 151 (S.C.) concludes this question.

5. Our answer to the question referred to us, therefore, is :

On the facts and in the circumstances, the Additional Sales Tax Tribunal was correct in holding that agarbatti should be taxed as an article of perfumery coming within the purview of entry in serial No. 36 of the Rate Chart provided for luxury goods.

There will be no order for costs.

Panda, J.

I agree.

