

(1982) 02 GUJ CK 0003
In the Gujarat High Court
Case No : Sales Tax Reference No. 17 of 1980

Lalmohan Confectionery Works

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 69

Citation : (1982) GLH 645 : (1983) 54 STC 376

Hon'ble Judges : D.H. Shukla, J;A.N. Surti, J

Bench : Division Bench

Advocate : R.D. Pathak and S.L. Modi, for the Appellant; R.P. Bhatt, Assistant Government Pleader for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Surti, J.—u/s 69 of the Gujarat Sales Tax Act, the following question formulated as a point of law is referred to us by the Sales Tax Tribunal.

"Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that liquid glucose or "glucanil" which the applicant had purchased and used in the manufacture of confectionery was a chemical covered by the expression "dyes and chemicals" used in entry 9 of Schedule II. Part A, to the Gujarat Sales Tax Act, 1969 ?"

2. When such a point was referred to us, Mr. R. P. Bhatt, the learned Assistant Government Pleader for the State, raised a preliminary objection as to the maintainability of the the reference in question of fact, and that being so, question (sic). He, in substance, strenuously urged before us that the question referred to us is purely a question of fact, and that being so, we have no jurisdiction to decided the aforesaid question. He also brought to our notice our limited jurisdiction, statutorily circumscribed u/s 69 of the Act, and submitted that unless this court is convinced that the question referred to us is purely a question of law, we should not entertain the present reference.

3. We may incidentally note at this stage, that in paragraph 9 of the judgment

delivered by the Tribunal, the Tribunal has stated as under :

"The contention in this case is as to whether liquid glucose purchased and used by the appellant in the manufacture of confectionery was a "chemical" or not."

4. In this behalf, we may also state that in para 16 of the judgment of the Tribunal, the Tribunal has stated as under :

"Therefore, we shall first endeavour to find if liquid glucose known as glucanil is a chemical or not. The appellant's learned Advocate was obviously at pains argue that liquid glucose was not a chemical; that Anil Starch Product Limited which had manufactured it under the trade name of glucanil, had sold it to his clients as a food preparation and not as a chemical"

5. In paragraph 27 of the judgment, the Tribunal has proceeded to observe as follows :

"In view of our above discussion, we are inclined to hold and do hold that liquid glucose sold in the trade name of glucanil which the appellant had purchased and used in the manufacture of confectionery was a chemical, and therefore, we are compelled to reject the contrary submission of the appellant's learned Advocate that it was not a chemical.

6. From the contents to the judgment delivered by the Tribunal, we are clearly of the view that before the Tribunal the controversy between the parties was centred round the following, viz., whether liquid glucose known as glucanil which the appellant had purchased and used in the confectionery was a chemical or food ?

7. In view of the aforesaid controversy and having regard to the point which is referred to us, we are convinced beyond any doubt that the Tribunal has referred to us for our decision purely a question of fact and not a question of law.

8. At this stage we may usefully refer to the Law and Practice of Income Tax, 7th Edition, Volume I, N. A. Palkhivala and B. A. Palkhivala. It is clearly mentioned in the comments at the foot of section 256 of the Income Tax Act, that a reference can only lie in the High Court only on the question of law and not on a question of fact. The learned authors have proceeded to observe further also that it is or the Tribunal to state the case and to formulate the questions of law. If the High Court finds that the statement of the case is incomplete and does not set out all the material facts, it may send the case back to the Tribunal u/s 258 for making the necessary additions or alterations. It may be pertinently noted, that in the application which was filed by the assessee before the Tribunal, no other point of law which required the decision of this Court was mentioned.

9. In view of our aforesaid discussion, we have no doubt that when we exercise our jurisdiction u/s 69 of the Act, we should only confine ourselves to the point referred to us by the Tribunal. It is well-settled by now, that if the point referred to us relates only to a question of fact, this Court has no jurisdiction to decide

the question. If the decision arrived at by the Tribunal on the questions of fact is erroneous or contrary to evidence or is perverse, it was open to the assessee to attack the finding of the Tribunal in the application which the assessee made to the Tribunal.

10. We have been shown by the opponent-State even the application filed by the assessee before the Tribunal for the purpose of necessary reference in regard to the points of law envisaged u/s 69 of the Act. Even in that application it is nowhere stated, that the finding arrived at by the Tribunal was based on no evidence or was perverse in any manner whatsoever. It is nowhere stated throughout the application that the finding recorded by the Tribunal was unreasonable on the fact of it or was as a result of some inadmissible evidence going on the record of the case or on account of wrong interpretation or construction of any document involved in the matter. In a very longish application filed by the assessee, there is no little indication or even the ghost of indication to show, that the assessee had any grievance against the finding of the Tribunal as the same was suffering from any of the aforesaid vices.

11. In view of what has been stated above, we are convinced beyond any doubt, that then point which has been formulated by the Tribunal and sent to us for decision does not involve any question of law at all. It pertains only to a question of fact, and hence, we have no jurisdiction to decide the question which has been referred to us by the Tribunal u/s 69 of the Act.

12. In spite of the aforesaid clear position which emerges from the compilation before us, Mr. Pathak made a strenuous effort in persuading us to take the view that the question which has been referred to us by the Tribunal involves a question of law. To substantiate his submission, Mr. Pathak urged before us, that assuming for the moment that the commodity concerned, i.e., glucose or glucanil, is a chemical, even then the same is not cover by the expression "dyes and chemicals" used in entry 9, Schedule II, Part A, to the Gujarat Sales Tax Act, 1969.

13. His second limb of argument was, that in the instant case, the contents of para 25 of the judgment of the Tribunal clearly show, that at one point of time, the learned Deputy Commissioner held liquid glucose as an item governed by residuary entry 13 of Schedule C, and as such is liable to rate of tax prescribed therein.

14. We have carefully heard Mr. Pathak, and it is not possible for us to see any point of law in the question formulated by the Tribunal and sent to us for our decision. If the assessee had any grievance against the finding of the Tribunal, the assessee could have brought the same to the notice of the Tribunal in clear and categorical terms. A pure question of fact cannot be converted into or looked at as point of law. This is a case where the assessee's learned Advocate concentrated his entire attack on the findings of the subordinate forums before the Tribunal purely on the questions of fact and that being so, we are in entire

agreement with what Mr. Bhatt urged before us, that in the instant case, the question which is referred to us by the Tribunal is purely a question of fact, and not a question of law.

15. We are conscious of the fact that when we are exercising our jurisdiction u/s 69 of the Act, we cannot travel outside the scope and ambit of our jurisdiction u/s 69 of the Act. If we made the least effort, we should be flagrantly violating the mandatory provisions contained in section 69 of the Act. Under the aforesaid circumstances, we are afraid, and we must say that we have no jurisdiction even to give a direction to the Tribunal to give to the parties an adequate opportunity to lead further evidence to prove that the liquid glucose or glucanil is food and is not chemical. It is needless to say, that if the assessee had any grievance on the said finding, it is always open to the assessee to approach the constitutional forum, but surely, this is not a proper forum to ventilate any grievance in regard to the facts not canvassed nor urged before the Tribunal.

16. The result of the aforesaid discussion is, that the reference is rejected; but having regard to the facts and circumstances of the case, we make no order as to costs.