(2003) 07 MP CK 0014

In the Madhya Pradesh High Court

Case No : L.P.A. No. 44 of 2003

Mahankal Agencies — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 62

Citation : (2003) 4 MPLJ 569

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : K.N. Puntambekar, for the Appellant; D.D. Vyas, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.

The unsuccessful petitioner has preferred this appeal under Clause X of Letters Patent, against the order of the learned Single Judge. By the order impugned, writ petition filed by the appellant has been dismissed.

Appellant deals in the sales and purchase of "Kachhua Chap Agarbati". For the assessment period from 1-4-1999 to 30-4-1999 and from 1-5-1999 to 31-3-2000, the appellant''s turnover arising out of sale of Kachhua Chap Agarbati was brought to tax under the provisions of the M.P. Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as "Act of 1994" for short). Initially, taxable turnover was assessed to Tax @ 4%. Later on, assessment was reopened and the appellant was reassessed to tax @ 12% by the Sales Tax officer. Appellant challenged the order of reassessment in revision u/s 62 of the Act of 1994. The Divisional Deputy Commissioner Commercial Tax, Indore, dealing with all contentions raised on behalf of appellant, dismissed the revision vide order dated 8-1-2003. Thereafter, appellant preferred the writ petition, which too was dismissed by the learned Single Judge, as mentioned above. That is how the appellant is before us in this appeal.

Shri. K.N. Puntambekar, learned counsel appearing for appellant very forcefully contended that the product which the appellant is selling is in fact an Insecticide and ought to be taxed as such and not as a Mosquito Repellent as has been done by the assessing officer. He further contended that the product in question couldn''t be put in the category of Good Night or Jet Mat. His further contention is that if the product in question is covered by the entry according to which the revenue sought to assess and levy tax, Mosquito Repellent not being a commodity, cannot be taxed. His next contention is Mosquito Repellent being an insecticide, it ought to be taxed an insecticide otherwise this would result in invidious and hostile discrimination between Kachhua Chap Agarbati and other insecticides. Learned Counsel placed strong reliance on the division bench decision of this Court report in 1993 10 TLD 401 which was subsequently followed by a single bench in the matter as reported in 2000 25 TLD 103. No other contention or citation was submitted before us for consideration.

Shri D.D. Vyas, learned Additional Advocate General, appearing for the State while supporting the impugned order of the learned Single Judge submitted that if one applies the "common parlance test" then Kachhua Chap Agarbati is not an insecticide for the purposes of tax under the provisions of the Adhiniyam of 1994. According to him Kachhua Chap Agarbati is one of the kind of Mosquito Repellant, which is a general item of daily use available in any grocer''s shop. He further contended that unlike any insecticide that annihilates pests or insects, vapors produced by either Jet Mat or Kachhaua Chap Agarbati only drive away mosquitoes and do not kill them. Learned Counsel appearing for the revenue further submitted that under the Schedule of the 1994 Adhiniyam, a separate entry, other than the entry for insecticide, has been made for levy tax on Mosquito Repellants by whatever brand name they are sold in the market. As regards the reliance placed on two decisions, submission of the learned counsel is that those decisions pertain to the period when no separate entry was provided for levy of tax on Mosquito Repellants under the provisions of M.P. General Sales Tax Act, 1958. According to him presently under the Adhiniyam of 1994, a separate and distinct entry has been provided, which clearly indicates that under the Adhiniyam for the purposes of taxation, Kachhua Chap Agarbati and other Mosquito Repellants have been excluded from insecticides. Thus according to him, the view taken by the learned Single Judge is in consonance with the settled principles of interpretation of entries in taxing Statutes and the same does not call for any interference in this intra court appeal.

We have perused the record and given our serious consideration to the rival submissions of the counsel appearing for respective parties in the context of factual background prevailing in the present case. After due consideration, in our considered opinion, there is no merit in appeal so as to warrant interference with the order of the learned Single Judge. It is well settled that that in interpreting items in statutes like the Sales Tax Act whose primary purpose is to raise public revenue and for which they classify diverse products, articles and substances, resort should be had not to the scientific or technical meaning of the terms and expression used but to their popular meaning. If any term or expression is defined in the taxing statute then it must be understood in that sense in which it is defined. But in the absence of any definition being given in the enactment, the meaning of term in common parlance or commercial parlance has to be adopted. Kachhua Chap Agarbati are ordinary item of every day use, therefore, what is of essence is to find out whether in commercial world Kachhua Chap Agarbati is understood as insecticide. In this connection reference may be usually made to few decisions of the Supreme Court. In Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, Supreme Court refused to accept the dictionary or botanical meaning of betal leaves and held that it could not considered as Vegitables as is popularly understood in common parlance. Similarly, in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, , Supreme Court held that the word Coal included Charcoal on the ground that in ordinary parlance coal includes charcoal. In Kisan Trimbak Kothula and Others Vs. State of Maharashtra, Supreme Court observed

The housewife is a competent interpreter of statutes dealing with household articles; the consumers'' understanding of the expressions used in legislation relating to them is an input in judicial construction. Law, in no branch, is an absolute abstraction or sheer mystique; it regulates the business of life and so its meaning must bear life''s impress.(Emphasis is added).

In the Eight Edition of "Interpretation of Statute" by Justice G. P. Singh, the learned author at page 88, has stated as under:

The justification of the rule that the words are to be understood in their natural, ordinary or popular is well expressed by JUSTICE FRANKFURTER : "After all legislation when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to sense of thing, as the ordinary man has a right to rely on ordinary words addressed.

In the light of above stated principles, we are clearly of the view that "Kachhua Chap Agarbati" does not answer the description of "Insecticide" in the popular sense of the word Kachhua Chap Agarbati is ordinary item of daily use. If one goes to market and ask for Kachhua Chap Agarbati, he is unlikely to get insecticide. Even persons dealing in insecticides would supply Kachhua Chap Agarbati only for household use and not for agriculture or horticulture purposes. It is also important to note that under the Act of 1994, Entry No. 11 in Part IV of the IInd Schedule was inserted by the M.P. Commercial Tax (Amendment) Act, 1995 w.e.f. 1-4-1995 and this entry, except for change in its serial number, have remained in the Act all along. This entry reads as under-

Sl. 11. - Mosquito and insect repellants such as jet mat, good knight mat, etc. (Emphasis is added). Whereas the Insecticide is specifically covered by entry 34 in Part V of the IInd Schedule which reads as under - "SI. No. 34 -Insecticide and pesticides other than those specified in serial No. 11 of Part IV" (Emphasis is added).

A Bare perusal of these two entries would reveal that for the purposes of Act of 1994, Mosquito repellants are treated as separate and distinct commodity for the purposes of taxation. Use of word other than those specified in serial No. 11 of Part IV is clearly indicative of this fact. Now the question is whether Kachhua Chap Agarbati would be covered by entry No. 11 of Part IV of by entry No. 34 of Part V? The answer lies in the use of words "such as" and "etc." in entry 11 of Part IV. Supreme Court dealt with this aspect in the Royal Hatcheries Pvt. Ltd. etc. Vs. State of Andhra Pradesh and another, and held as under:

Regarding the meaning of the word "etc.", it was observed that the word "etc", is absolutely different from "et alia" and that it means "all the rest."

In the same judgment, Supreme Court held use of expression "such as" only indicate what are mentioned thereafter are only illustrative and not exhaustive.

Now, if we examine the earlier decisions of this Court in the light of aforesaid principles we find that during the relevant assessment period with which this court was concerned, there was no separate entry dealing with Mosquito Repellants. In absence of any specific entry, the earlier decisions of this Court turned on their facts and the law as was in force involved in them and therefore, clearly distinguishable from the facts of the present case. Reliance placed on the earlier decision is of no avail to the appellant in view of change in law.

The next contention regarding discrimination as raised by the learned counsel is only to be noted for rejection. Now it is well settled in law that in the matter of economic legislation legislature enjoys greater play in the joint, In this regard, reference can be made to the decision of the Constitutional Bench reported in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, wherein the Supreme Court observed and held as under:-

The principles relevant in judging the validity and relevant in the matter of interpreting the provisions of such economic measures are fairly well settled. It is held that in case of such enactments the legislature must be permitted a greater play in the joints". It was further observed that "The court must always remember that ''legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry''; "that exact wisdom and nice adaptation of remedy are not always possible'' and that ''judgment is largely a prophecy based on meager and uniterpreted experience''. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture vs. Central Roig Refining Cofs. be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

In view of the law laid down the plea of discrimination between mosquito repellants and other insecticide and pesticides is not available to appellant. Thus any mosquito repellent available in the market by any brand name would be covered by entry 11 of Part IV as long as it stands in the statute books. The reliance placed on two decisions of this Court is of no avail as those decisions dealt with the question when there was no separate entry covering the Mosquito Repellents, unlike in the present case.

In view of the above discussion, we have no hesitation to hold that Kachhua Chap Agarbati is not insecticide for the purposes of the Act of 1994. Thus we find that the view taken by the learned Single Judge is perfectly in tune with the settled principles, which does not call for any interference. Thus the appeal being devoid of any substance, merits dismissal but no orders as to costs.