
(2005) 03 PAT CK 0090

In the Patna High Court

Case No : CWJC No"s. 759 and 762 of 2005

Marico Industries Ltd.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Bihar Finance Act, 1981 — Section 12, 12(1), 17(3), 2, 3
Evidence Act, 1872 — Section 56

Citation : (2005) 2 BLJR 990 : (2005) 2 PLJR 344 : (2005) 142 STC 478

Hon'ble Judges : Nagendra Rai, Acting C.J.;S.N. Hussain, J

Bench : Division Bench

Advocate : S. Pal, S.D. Sanjay, N. Patherya and Suraj Samdarshi, for the Appellant; R.K. Dutta, SC IV and Rajnandan Prasad, JC to SC IV, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, A.C.J.

1. The sole petitioner in both the cases is the same and a registered company under the Companies Act and it is engaged in sale/marketing of consumer products including edible Parachute Coconut Oil and it also manufactures other edible oil under different brands. It is a registered dealer under the provisions of the Bihar Finance Act, 1981 and the Central Sales Tax Act, 1956 (hereinafter referred to as the Bihar Act and Central Act respectively).

2. The petitioner has filed the writ applications for quashing the assessment order dated 11.2.2003 passed by the Assistant Commissioner, Commercial Taxes, Patna South Circle, Patna u/s 17(3) of the Bihar Act for the assessment years 2000-2001 and 2001-2002 by which the Parachute Coconut Oil, the product sold by the petitioner has been charged the sales tax at the rate of 12% in terms of Entry No. 245 instead of 9% as provided under Entry No. 63 and the orders dated 31.8.2003 and 1.7.2003 passed by the Commissioner of Commercial Taxes, Bihar Patna upholding the said order of the Assessing Officer as well as

the common order dated 1.11.2004 passed by the Commercial Taxes Tribunal, Bihar, Patna in revisions filed by the petitioner upholding the aforesaid order of the Assessing Authority.

3. Section 12 of the Bihar Act contains a provision with regard to rate of tax and it provides that the sales tax or purchase tax payable by a dealer u/s 3 or 4 shall be levied at the rate of eight percentum of his taxable turnover. However, proviso to Sub-section (1) of the said Section gives discretion to the State Government to lower down or to enhance the rate of tax not below 2% in respect of lowering the rate and not more than twenty five percentum in case of imposing a higher rate of tax.

4. In exercise of the aforesaid power the State Government issued notification dated 26.12.1977, Annexure 1, prescribing different rate of taxes with regard to commodities and also with effect from the date mentioned therein. Item No.63 provides rate of Tax @ 9% for Vanaspati or hydrogenated oil and other edible oil, coconut oil and groundnut oil but excluding mustard oil, rape oil and mixture of mustard and rape oil. On 2nd January, 1998, vide Annexure 3, the State Government issued notification under Proviso to Sub-section (1) of section 12 of the Bihar Act providing rate of tax of different goods and item No. 195 contains non edible oils for which rate of tax prescribed was 8%. Again on 27th July, 2000, a notification was issued by the State Government in exercise of powers conferred under proviso to Sub-section (1) of Section 12 of the Bihar Act providing rate of tax with regard to several items and Entry No. 245 contains Hair oil including Medicated Hair oil and rate of tax prescribed was 12%. Again another notification was issued on 27th March, 2003 and in the said notification coconut oil has been taken out from Entry No. 63 and included in Entry No. 245 with effect from 1.4.2003. There is no controversy that coconut oil is now included in the hair oil and the controversy is with regard to earlier period.

5. The question which falls for consideration in this case is as to whether Parachute Coconut Oil, product of the petitioner is a hair oil covered by Entry No. 245 of the Notification dated 27.7.2000 providing the rate of tax @ 12% or it is covered by Entry No. 63 of the notification dated 26.12.1977 providing the rate of tax at the rate of 9%.

6. As stated above, the tribunal has held that Parachute Coconut Oil is hair oil and is covered by Entry No.245 of Notification dated 27.7.2000. The grounds given by the Tribunal for coming to the conclusion are enumerated in the last but one paragraph as follows :

"It is very clear that said coconut oil has not been taken as edible oil as per the Bihar Trade Article Licenses Unification" Order 1984. Secondly judicial notice can also be taken that coconut oil is not used as edible oil in Bihar rather it is always used as hair oil. Thirdly, TV, Ad and other advertisements of this item also support the fact that it is used as hair oil best suited for the health of hair."

7. Mr. Pal, learned counsel appearing for the petitioner submitted that authorities

have, not correctly considered the question as to under which Entry coconut oil will fall. According to settled law, none of the grounds given by the tribunal for coming to the conclusion is tenable in law. He submitted that when coconut oil falls under Entry No. 63, then it should be taxed at the rate of 9 per cent if it is for dwell purpose of being used as edible oil or hair oil for the simple reason that when a particular item is covered by specific Entry then general Entry No. 245 cannot be resorted to. He also submitted that the Tribunal has wrongly held that the judicial notice can be taken of the fact that the coconut oil is used only as hair oil in the State of Bihar.

8. Learned counsel appearing for the State on the other hand submitted that the settled law is that criteria for determining as to whether a particular item will fall under which entry is to be determined by the use of it put to by the customers who use it and the judicial notice can be taken of the fact u/s 56 of the Evidence Act that the coconut oil is not used as edible oil in the State of Bihar and the Tribunal has rightly held that Entry No. 245 will apply in the case of product of the petitioner.

9. It is settled law that the taxing statute is to be interpreted strictly and if different view are possible with regard to a matter then the view favourable to the subject or the assessee is to be adopted. It is also equally well settled that if there is no ambiguity about a particular item falling under a particular category for taxation purpose then that is to be accepted. However, when there is dispute as to the meaning as to under which category the article will fall for the purpose of taxation, then the meaning to be given to the articles must be as people in trade and commerce, conversant with the subject generally treat and understand them in usual course. (See *Dunlop India Ltd. v. Union of India*, AIR 1977 SC 597.

10. The other criteria for determining the classification is the use by the customers who use it. (See paragraph 14 of the judgment in the case of *Commissioner of Central Excise v. Sharma Chemical Works* (2003) 132 STC 251. The said case was an excise matter but the Apex Court also held that in a case whether a particular entry falls under a particular tariff or not onus or the burden is always on the Revenue.

11. Learned counsel appearing for the petitioner relied upon two decisions in support of his submission, in the cases, namely, *Murli Oil Packers Pvt. Ltd. v. Assistant Commercial Taxes Officer, Anti Evasion, Ward II, Circle 3, Jaipur* (1999) 114 STC 128, *Sonic Electrochem and Anr. v. Sales Tax Officer and Ors.* (1998) 111 STC 181.

12. The case of *Murli Oil Packers Pvt. Ltd.*, (supra) is the decision of Rajasthan Taxation Tribunal at Jaipur. The assessee in that case was engaged in the business of manufacture and sale of edible refined coconut oil under the brand and trade name "Parivaar". The assessee was paying tax at the rate of 4% on the " rate applicable under Entry No. 50 which includes "all kinds of edible oils including edible coconut oil whether refined or filtered "and not 12% as provided

under Entry No. 72 which includes all types of hair oils including refined or filtered coconut oil. The Tribunal held that the coconut oil is used for dwell purpose but it was used as edible oil, therefore Entry No. 50 was attracted.

13. The said case is not helpful for deciding the matter in controversy in this case for the simple reason that there the same product was included in both the entries and view favourable to the assessee was taken by the Tribunal.

14. In the case of Sonic Electrochem (supra), the question for consideration was whether "Jet mat" manufactured by the assessee was mosquito repellent and the Apex Court accepted the view taken by the High Court and the authorities under the Act for the reason that the product is commercially known as Mosquito repellent and the entry clearly stipulated that the "mosquito repellent" is taxable and not exempted from tax.

15. The said case also is of no help to determine the point in controversy as the entry was very clear and in that context it was held that there is no ambiguity with regard to applicability of the entry.

16. No doubt, Entry No. 63 at the relevant time included coconut oil also but perusal of the aforesaid entry will clearly show that coconut oil is included under item No. 63 which is used as edible oil as the entry itself includes Vanaspati or hydrogenated oil and other edible oil, coconut oil. If the coconut oil is not used as edible oil then that entry does not include it. Entry No. 245 which was incorporated subsequently includes all hair oil including medicated hair oil and as such if coconut oil is used as hair oil Entry 245 will be attracted. It is onus on the Revenue to prove that it falls under Entry No. 245 and such determination cannot be made only on the basis of speculation.

17. One of the grounds given by the Tribunal that coconut oil is not included in the Bihar Trade Articles (Licences Unification) Order, 1984 is not correct as Section 2(f) defines edible oils specified in Part "D" of Schedule I which, includes Hydrogenated vegetable oil. Hydrogenated vegetable oil is hair oil and Coconut oil is a Hydrogenated Vegetable oil and as such the Tribunal was not right in taking the same as a ground for deciding against the assessee. The other ground that advertisement shows that Parachute coconut oil is hair oil is also not relevant factor as there is no dispute that the coconut oil is used for both purposes for hair oil as well as edible oil. Thus two of the grounds given by the Tribunal is wholly irrelevant.

18. As there was controversy as to whether the coconut oil is hair oil or edible oil, the Tribunal should have determined the classification with reference to its use by the customers in view of the law laid down as stated above as it is admitted fact that it can be used for dwell purposes. The burden was on the revenue to prove that it is used as hair oil and not edible oil. No doubt, the court can take judicial notice of the fact and in that case proof is not required, but in a case like this when the articles are of dwell use, it is not safe to take a judicial notice, on the other hand it is better that some materials are brought on record

by the Revenue to discharge the burden.

19. Thus, in our considered view for the aforesaid reasons, the order passed by the Tribunal is vitiated and it requires reconsideration in the light of the law indicated above.

20. Accordingly, the order passed by the Tribunal is quashed and the matter is remitted to the Tribunal for fresh consideration in the light of the observations made above.

21. In the result, both the writ applications are allowed.

S.N. Hussain, J.

22. I agree.