
(1975) 01 BOM CK 0027
In the Bombay High Court
Case No : S.T.R. No. 3 of 1969

Navrang Plastics

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-01-1975

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 10, 52, 61(1)

Citation : (1975) 35 STC 510

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : B.C. Joshi and P.C. Joshi, for the Appellant; M.H. Shah, for the Respondent

Judgement

Kania, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act").

2. The facts on which the reference arises are as follows : The applicants manufactured and sold hairpins made from pin wire and plastic. According to the applicants, the plastic used was obtained from useless or discarded plastic pieces and the said pins were sold at the rate of two paise per hair-pin. The applicants made an application u/s 52 of the said Act for determination of the rate at which tax which was payable in respect of the sale of these hairpins. This application was disposed of by the Commissioner of Sales Tax. The contention of the applicants before the Commissioner was that the hairpins manufactured by them were covered by the residuary entry No. 22 of Schedule E to the said Act, whereas the contention of the department was that these articles were covered by entry No. 7 of the said schedule. The Commissioner came to the conclusion that the plastic hairpins manufactured and sold by the applicants fell within the scope of entry No. 7 of the Schedule E to the said Act and the sales thereof attracted sales tax at the rate of five paise in the rupee and general sales tax at three paise in the rupee u/s 10 of the said Act. The applicants went in appeal against this decision to the Sales Tax Tribunal. Their appeal was, however,

dismissed by the Tribunal.

3. The question, which has been raised for our consideration in this reference, at the instance of the applicants, is as follows :

"Whether, upon a correct interpretation of entry 7 of Schedule E to the Bombay Sales Tax Act, 1959, the hairpins dealt with by the applicants fall under entry 7 of Schedule E to the Act ?"

4. As the arguments turn on the provisions of some of the entries contained in Schedule E to the said Act, it may be useful to set out the same at this stage. Entries Nos. 7, 19 and 22 of the said schedule, as they stood at the relevant time, ran as follows :

----- Sl. Description of						
Rate of sales	Rate of general	Rate of purchase	No. goods.	tax.	tax.	(1) (2)
(3)	(4)	(5)	-----	7.		
Toilet articles	Five paise	Three paise	Five paise	including hair in the	in the	in the
cream, hair	rupee.	rupee.	rupee.	tonic and hair-oil (but excluding soap).	19.	
Perfumes, depila-	Ten paise	Three paise	Ten paise	tories and in the	in the	in the
cosmetics (except	rupee.	rupee.	rupee.	soap and articles specified in entry 7 in		
this schedule).	22.	All goods other	Three paise	Three paise	Three paise	than
those in the	in the	in the	specified from	rupee.	rupee.	rupee.
Schedules A, B, C and D and in the preceding entries.						

5. The submission of Mr. Joshi, the learned counsel for the applicants, was that the said hairpins could not be considered to be toilet articles at all. In support of this submission, Mr. Joshi placed reliance on the decision of the Madras High Court in Deputy Commissioner of Commercial Taxes v. Ambika Stores ([1963] 14 S.T.C. 688), where it was held that the words "toilet requisites" in item 51 of the First Schedule to the Madras General Sales Tax Act, 1959, prior to its amendment by Amendment Act 6 of 1963, should be given a restrictive meaning and should be taken to include only goods of the nature enumerated in that item and, therefore, iron hairpins could not be included in the words "toilet requisites" or in the list of items enumerated in item 51. It may be mentioned that the relevant portion of item 51 ran as follows :

"Scents and perfumes, powders, snows, scented hair-oils, scented sticks, cosmetics and toilet requisites, except soaps."

6. The Madras High Court had referred to the rule of ejusdem generis that where general words follow the designation of particular things or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. This rule of ejusdem generis was applied to the interpretation of the general words "toilet requisites" and the said words were given a restricted meaning as aforesaid. This decision, in our view, is of no help to Mr. Joshi at all,

because in entry No. 7, with which we are concerned, there are no words describing or designating particular things, classes of persons or subjects followed by the general words as in the case of the item, which came up for construction before the Madras High Court. On the other hand, the words "toilet articles" in entry No. 7 of Schedule E to the said Act, which are general in nature, are followed by the words, viz., hair cream, hair tonic and hair-oil. There is therefore, no question of the application of the principle of ejusdem generis. On the other hand, we find that in Commissioner of Sales Tax v. Jai Shri Products ([1974] 34 S.T.C. 494), a Full Bench of the Allahabad High Court has taken the view that hairpins and hairclips are "toilet requisites" as defined in item No. 6 of Notification No. S.T. 905/X dated 31st March, 1956, issued u/s 3-A of the . It has been further held that the expression "cosmetics and toilet requisites" has not been defined in the aforesaid Act and, therefore, it has to be understood as in common parlance. The Full Bench has pointed out that hairpins and hairclips are appliances used for holding the hair in place after combing or brushing and although they may not fall within the category of "cosmetics", they do fall in the expression "toilet requisites", which means articles used in the act or process of dressing, cleansing and grooming of one's person.

7. We next find that in State of Gujarat Vs. Prakash Trading Co., Ahmedabad, , the Supreme Court has taken the view that tooth-paste is a "toilet article" within the meaning of entry 21A of Schedule E to the Bombay Sales Tax Act, 1959, as amended by Gujarat Act No. 25 of 1962. It was held by the Supreme Court that both Colgate tooth-paste and tooth-brush were "toilet articles" within the meaning of entry 21A of Schedule E to the said Act. Entry 21A, which was under consideration in that case, ran as follows :

"21A. Toilet articles including hair cream and hair tonic; and perfumes, depilatories and cosmetics (except soap as specified in entry 28 in Schedule C, and hair-oil as specified in entry 7 of this schedule)."

8. Entry 22 was the residuary entry. The Supreme Court has pointed out that according to the dictionary meaning given in Webster's International Dictionary, the expression "toilet" means "an act or process of dressing, especially formerly of dressing hair and now usually cleansing and grooming of one's person". "Toiletry", according to the dictionary, is "an article or preparation used in making one's toilet such as soap, lotion, cosmetic, tooth-paste, shaving cream, cologne, etc." The decision of the Supreme Court clearly shows that in arriving at their conclusion, their Lordships of the Supreme Court relied on the dictionary meaning given to the words "toilet" and "toiletry". We may also point out that from the decision of a Division Bench of this Court in Plastella & Co. v. State of Bombay [1959] 10 S.T.C. 511, it appears that a comb has been considered to be a toilet article. We may point out that in the Concise Oxford Dictionary, Fifth Edition, one of the meanings given to the expression "toilet" is "process of dressing, arranging the hair, etc." From the meaning of the word "toilet" given in the Shorter Oxford English Dictionary, Vol. II, Third Edition, it would appear that

by "toilet articles" are meant the articles required or used in dressing. There is, therefore, no doubt that if the words "toilet articles" in entry No. 7 of the said schedule are to be construed according to their plain and grammatical meaning or even according to the common parlance, these words include articles such as hairpins. These hairpins are designed clearly to hold the hair together after washing or combing and can, therefore, be said to be "toilet articles". The only question is whether there is any reason why a more restricted meaning should be given to the words "toilet articles". In view of the above decisions, we fail to see why any such restricted meaning should be given to those words, as suggested by Mr. Joshi.

9. The next submission of Mr. Joshi was that for a proper construction of entry No. 7, it should be read with entry No. 19 of the said Schedule E and, on such reading, the expression "toilet articles" in entry No. 7 would include only such articles used in toilet as are of the nature of perfumes, depilatories and cosmetics referred to therein. It was urged by Mr. Joshi that this was the reason for the bracketed portion of entry No. 19, which takes out from the scope of that entry soap and articles specified in entry No. 7 of the said schedule. In our view, this submission is totally unsustainable. There can be no dispute that the words "toilet articles" used in entry No. 7 are much wider in their ambit than the words "perfumes, depilatories and cosmetics" used in entry No. 19, and, if the submission of Mr. Joshi were correct, then entry No. 19 would become altogether redundant. The only reason why entry No. 19 has been worded, as it stands, is to demarcate the scope of that entry from that of entry No. 7. This submission of Mr. Joshi must, therefore, be rejected.

10. As far as entry No. 22 is concerned, it is a residuary entry and as, in our opinion, the hairpins manufactured and sold by the applicants are covered by entry No. 7 of Schedule E to the said Act, there can be no question of these articles falling in entry No. 22.

11. In our view, the Tribunal was right in coming to the conclusion that the articles in question fell within the scope of entry No. 7 of Schedule E to the said Act and attracted tax at the rates mentioned therein.

12. In the result, the question referred to us is answered in the affirmative. The applicants to pay to the respondent the costs of this reference.

13. Reference answered in the affirmative.