(2000) 01 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 1002 of 1990 and 1539 of 1991

Panama Chemical Works and Another — APPELLANT

Vs

Commissioner, Sales Tax — RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 42B

Citation : (2000) 120 STC 64

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : A.M. Mathur and B.K. Pandya, for the Appellant; Amit Agrawal, Government Advocate, for the Respondent

Judgement

Deepak Verma, J.—This order shall also govern disposal of M.P. No. 1539 of 1991 (Richardson Hindustan Limited v. Assistant Sales Tax Commissioner), as common questions of law and facts are involved in these petitions. Both the petitions were, accordingly, heard together and are being disposed of by this common order.

2. However, for the sake of convenience, the facts as appearing in the said petition, are being taken into consideration.

3. Petitioner No. 1 is a manufacturer of an ayurvedic product, called "Swad" tablets, which, according to it, are being used for therapeutic prophylactic purposes. These tablets are being manufactured in accordance with ingredients mentioned in the authoritative text books of ayurved. According to the petitioners, it contains ayurvedic substances together with glucose liquid and sugar. The said product "Swad" is being prepared under a licence issued by the Drug Licensing Authority appointed under the Drugs and Cosmetics Act, 1940. Petitioner No. 1 is a duly registered dealer under the M.P. General Sales Tax Act. According to the petitioner, since the tablet known as "Swad" is an ayurvedic medicine, therefore, it should fall under item No. 16 in the heading of Drugs and medicines of Part IV of the Second Schedule to the M.P. General Sales Tax Act,

1958 (hereinafter, for short, "the Act"), consequently, it would be liable to pay tax on the said medicine at 3 per cent.

4. It appears that there was some doubt in the mind of the petitioners as to at what rate, the said medicine would be leviable for tax. It therefore filed an application before the Commissioner of Sales Tax, Indore, u/s 42-B of the Act, requesting him for determination of the rate of tax, liable to be paid by the petitioner on the said tablet "Swad".

5. By the impugned order, passed on July 9, 1990, Commissioner was pleased to hold that the tablet "Swad" cannot be termed as ah ayurvedic medicine, instead, it would be a confectionery. Thus, the same would be liable to pay tax at 12 per cent and not 3 per cent. It is this order, which is subject-matter of challenge in this petition.

6. Respondents have submitted their reply in oppugnation. They have submitted that no illegality, infirmity or perversity can be found in the impugned order. Therefore, while exercising powers under Article 227 of the Constitution, no case has been made out for any interference. They have further contended that the necessary quantity of ayurvedic substances were not used by the petitioner for manufacturing of the tablet "Swad", as only 3 per cent of ayurvedic substance was found in the same, whereas, 97 per cent was sugar and glucose. It was their further contention that in common parlance, the tablet "Swad" is more popular and is being sold as a confectionery rather than as a medicine. They have accordingly, prayed that petition be dismissed, as there is no substance or merit in the same.

7. I have heard them at length, perused the record.

8. The question with regard to whether the tablet manufactured and sold in market under the said name "Swad" would be a confectionery or an ayurvedic medicine, has to some extent been already decided by a division Bench of this Court in the matter of Panama Chemical Works Vs. Union of India (UOI), . This judgment of the division Bench came to be passed on July 2, 1992 that is much after the impugned order was passed. Naturally, this judgment could not have been taken into consideration by the Commissioner, while passing the impugned order.

9. During the course of hearing, the learned counsel appearing for the parties were not able to inform this Court, if the judgment of Panama Chemical Works Vs. Union of India (UOI), was taken to the Supreme Court and the result thereof. Thus, it should be taken that the said judgment has attained finality.

10. In the matter of Panama Chemical Works Vs. Union of India (UOI), , the division Bench has been pleased to record a finding that the product "Swad" is an ayurvedic medicine, even though the division Bench was not considering the said question directly as it pertained to challenge to the notices issued to petitioner No. 1 under the Central Excises and Salt Act, 1944. In view of this finding,

recorded by division Bench, it would be desirable to remand the matter to respondent to decide the question afresh after taking into consideration all aspects of the matter.

11. Thus, the impugned order of this petition, annexure P6, dated July 9, 1990 is quashed. Similarly, the main impugned order of connected M.P. No. 1539 of 1991, annexure P7, dated July 30, 1991, passed by the Assistant Sales Tax Commissioner, Indore and the consequent demand notices issued, stand hereby quashed. Both the authorities shall now decide the matter in the light of division Bench judgment of this Court in the matter of Panama Chemical Works Vs. Union of India (UOI), . The respondent/State, if, so desires, shall be at liberty to cite any other judgment on its behalf, which would also be considered by the said authorities. Thus, this and the connected petitions stand disposed of, but, with no order as to costs. Security amount if, deposited, be refunded back of the petitioners after its due verification.

