(1966) 09 AHC CK 0021

In the Allahabad High Court

Case No : Sales Tax Misc. Cases No''s. 385 and 468 of 1964

Plastic Products Ltd. APPELLANT

Vs

The Commissioner, Sales Tax, U.P. RESPONDENT

Date of Decision : 21-09-1966

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : AIR 1968 All 3 : (1967) 19 STC 480

Hon'ble Judges : S.C. Manchanda, J;M.H. Beg, J

Bench : Division Bench

Advocate : C.S.P. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

Manchanda, J.—These are cases stated u/s 11 of the U. P. Sales Tax Act (hereafter referred to as the Act) The question referred is.

"Whether safety razor as manufactured by the applicant dealer can be classified as cosmetic and toilet within the purview of Notification No 905/X referred to above?"

2. The facts lie within a narrow compass. The assessee is a manufacturer of safety razors made out of plastic material. The relevant year of assessment is 1957-58. The Assessing Officer claimed that such a safety razor fell within the mischief of item No. 6 cosmetics and toilet requisites and was, therefore, assessable at a higher rate under the said notification issued u/s 3A of the Act The assessee''s contention on the other hand was that a safety razor was not a "cosmetic" nor was it a "toilet requisite" and therefore, it fell to be assessed at the lower rate, under the general charging Section 3 of the Act. The Sales Tax Officer, however, held safety razors to fall within item No 6 of the aforesaid notification and assessed it at single point accordingly. The assessment was confirmed by the Judge (Appeals) and the Judge (Revisions) Hence this reference at the instance of the assessee.

3. The relevant notification was issued under the powers conferred by Section 8A of the Act and it was declared:

"That the turnover in respect of the goods specified in the list below shall not with effect from April 1. 1956 be liable to tax except

(a) in case of goods imported from outside Uttar Pradesh at the point of sale by manufacturer;

(b) in the case of goods manufactured in Uttar Pradesh, at the point of sale by the manufacturer; and the Governor is further pleased to declare that such turnover shall with effect from the said date be taxed at the rate of one anna per rupee . Hem 6. "Cosmetics and toilet requisites".

The Hindi version of Item 6 of the Notification is. (sic)

4. The list given in this Notification is a very elaborate one and has as many as 47 items ranging from "agricultural implements" to X-ray machines". Item No 6 is cosmetics and toilet requisites" Item No 35 is "sandal-wood oil" but this was deleted by a notification in 1956. Item 37 is "scents and perfumes" Hem 38, "soap, other than washing soap" Items Nos 35. 37 and 38 have been specifically mentioned notwithstanding, that they are included in the dictionary meaning of the words "cosmetics and toilet requisites" This shows how meticulous and careful the notification was to specify, even at the cost of repetition where there was the slightest possibility of such article escaping from the clutches of the notification

5. There is admittedly no item of "razor" or ''safety razor'' and that is why the department has been pushed into bringing it within item No. 6. The question that falls to be considered is whether the article "safety razor" fairly and squarely falls within the item "cosmetics or toilet requisites''"? "Cosmetics" is the special word used in item 6 which is followed by the general words "toilet requisites" What do these words mean? In Webster''s Third New International Dictionary the meaning given of "cosmetic" is "the art of beautifying the body, a preparation (Except soap) to be applied to the human body for beautifying preserving or altering the appearance of a person or for cleansing, colouring conditioning or protecting the skin, hair nails, lips, eves or teeth" This word in Corpus Juris Secundum Vol 20, is given the meaning, "a general term construed as having reference to hair preparations as well as to skin lotions, as including hair oils, eyes and dressings, tooth pastes, washes and dentifrices and toilet soaps; defined as meaning any external application intended to beautify or improve the complexion skin, or hair"

6. "Toilet" in Webster''s Third New International Dictionary, means "to make one''s toilet; dress-groom the process of washing, grooming and arranging one-self for the days activities or for a special occasion" The examples of this arc given as "toilet soap, toile- try, etc." Toiletry" means "an article or preparation used in making one''s toilet (such as a soap, lotion, cosmetic, tooth paste, shaving cream, cologne)". In Corpus Juris Secundum. Vol. 86, it is mentioned in

respect of "Toilet" that "there are several different definitions given for the word "toilet". It may mean act or process of dressing; also, that which is arranged in dressing; attire; dress; "get up", also a particular costume and it may designate the several articles collectively used in making one''s toilet. While formerly the terms referred specially to the act or process of dressing hair, in current use it means a cleansing and grooming of one''s person. Thus the act of washing and cleansing the hands is a part of making the toilet and the daily shave is generally regarded as a toilet necessity." According to the Shorter Oxford Dictionary "requisite" means "required by circumstances or the nature of things" Therefore, a "toilet requisite" will be a thing that is required by circumstances or the nature of the thing for purposes of toilet.

7. It is plain that the dictionary meaning of ''toilet'' is very wide and toilet requisites cover a large variety of articles ranging from toilet paper, toilet cloth to the requirements of the dressing table and bathroom. If that is the meaning which has to be given to toilet requisites then a safety razor would conceivably fall within it. That, however, is not the meaning that has to be given to those words in the context in which they are used in the notification. Such meaning could only have been given if Item 6 "toilet requisites" had stood alone but they arc preceded by the specific word "cosmetic" and therefore the rule of ejusdem generis in the construction of statutes will come into play In any event it is unnecessary to give any conclusive decision on this aspect as we are taking the view that razors complete or incomplete are not toilet requisites within Item 6 of the notification. The rule of ejusdem generis has been considered in three cases by the Supreme Court In Thakur Amar Singhji Vs. State of Rajasthan, it was pointed out that the true scope of the rule of ''ejusdem generis'' is that words of a general nature following specific and particular words should he construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the genera) words which follow Again in The State of Bombay Vs. Ali Gulshan, the Supreme Court issued a warning that "apart from the fact that the rule of ''ejusdem generis'' must be confined within narrow limits and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied" Then again, in Lilavati Bai Vs. The State of Bombay, it was reiterated that it was "the established rule of construction that the legislature presumed to use the general words in a restricted sense that is to say as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context or the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning."

8. Therefore, what has to be considered is the scheme of the notification No. 905

in selecting certain goods for single point higher taxation The intention was quite clear and that was that the general words which followed the specific word were to be given a restricted meaning. Cosmetics" was the specific word and this was followed by toilet requisites" In the context, manufacturers of all toilet requisites were not to be taxed at a higher rate. It was only the manufacturer of such toilet requisites as would be of the same genus as "cosmetics" that were to suffer the higher tax. To take some examples to illustrate the point, it is manifest that toilet paper, toilet cloth, toilet equipment needed for a dressing room or bath room would not fall within the mischief of Item 6 Nor could it ever have been the intention to include all kinds of articles or artificial aids, which might go to beautify or render the body more beautiful as toilet requisites such as necklaces jewellery, hairpins scissor; bangles. On the rule of ''ejusdem generis'', therefore, "toilet requisites" must be confined to those articles which are of the same genus as "cosmetics" If that be the true interpretation of the words "toilet requisites" it is difficult, if not impossible to conceive, of a safety razor with or without a blade as being of the same genus as "cosmetics" though it may be a "toilet requisite" within the wider dictionary meaning It only remains to notice the cases cited at the Bar The Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, held that "Pan" was not "vegetable" within the meaning of Item 6 of Schedule 11 of the C P. and Berar Sales Tax Act, 1947. In The Deputy Commissioner of Commercial Taxes, Madras Division Vs. Ambika Stores, the Madras High Court held that "hairpins were not "toilet requisites" within the meaning of item 51 of the first schedule to the Madras General Sales Tax Act. Again in V.P. Somasundara Mudaliar Vs. The State of Madras, the Madras High Court held that "tooth powder" does not come within the scope of item 51 of the First Schedule to the Madras General Sales Tax Act. 1959 because a tooth powder was only used for rubbing and cleaning the teeth and not for beautifying or enhancing the appearance and the cleaning of the teeth should be regarded as an indispensable daily hygiene intended to protect the teeth and preserve them in good condition In C.C. Mahajan and Co. Vs. The State of Bombay, the Bombay High Court held that a powder or soap used as depilatory is one which is used for the purpose of cleaning and grooming one''s person and as such it is a toilet article In S. T. Reference No 780 of 1961 (All) a Bench of this Court took the view that Brahmi Amla Hair Oil was both a cosmetic and a toilet requisite and oils other than an edible oil fell within item 6 of the said notification No. ST 905/X These cases only show that no hard and fast rule can be laid down and each case has to be decided on its own facts

9. It was also contended by the assessee in (he alternative, that the article manufactured must be complete in itself for use as a toilet requisite without any outside aid. In other words the contention was that even if a plastic safety razor manufactured could be considered to be a toilet requisite it would not qualify as such for the purpose of the said notification, for the reason that by itself it cannot be used as a toilet requisite and required the insertion of a safety blade before it can be put into use Reliance for this proposition was placed on Mettur

Sandalwood Oil Co., Mettur Dam Vs. State of Madras,) (Sandalwood oil held not to be a "perfume or scent"). The Deputy Commissioner of Commercial Taxes, Madurai Division Vs. Iyanar Coffee and Tea Co., (French Coffee is not "coffee" as it requires admixture of chicory powder) and Pravin Bros. Vs. The State of Gujarat, (Cotton Saree when embroidered held not to be a "cotton fabric") We cannot accede to this contention, for it is not impossible for an article which requires some outside help before it can be put into use to qualify as a toilet requisite if the other conditions are fulfilled The argument of the learned counsel taken to its logical conclusion would lead to an absurdity for even if the razor together with the blade was a toilet requisite it could still not be put into use without the application of soap or powder for the purpose of shaving and, therefore, the razor even with the blade would not be a toilet requisite That could never have been the intention In any event it is not necessary to express any concluded opinion on this point as in our view a razor is not a "cosmetic" or a "toilet requisite" within the meaning of item 6 of the said notification

10. For the reasons given above we would answer the question in favour of the assessee by saying that the razor will be taxable u/s 3 of the Act and not at one anna per rupee u/s 3A of the Act The applications are allowed with costs of Rs 100 in each case Counsel''s fee is also assessed at Rs 100 in each case

Beg, J.

11. While agreeing with all that has fallen from my learned brother Manchan-da, J. in answering the question before us I feel bound to state my reasons for what may look like overlooking what is called the literal rule of interpretation Thr view has been held, in times when statutory law and rules did not constitute anything like the enormous volume which now issues forth from the legislative channels in a modern State, that the literal or "plain meaning rule" must be adopted even if absurd results follow: See Jervis C. J. in Abley v. Dales (1851) 11 CB 378 As Sir C. E Odgers points out in"construction of Deeds and Statutes" (3rd edition 1952) at page 311, this method of approach was common and important at a time when Statutes were not framed in the wide and general language in which they are couched today, Now courts apply the rule less rigidly The practice of today is to enact only the skeleton of the law in the Statutes, and the details are left to be filled up by statutory rules and Notifications There are no special rules for interpreting such Notifications apart from general rules of interpretation of statutes and documents which apply. The haste in which the increasing number of such notifications, and, indeed, many statutes are now drafted, often leaves unintended defects which give rise to difficulties when the question of interpreting them arises In these conditions, it is impossible to apply the literal rule very strictly or always At least departure from that rule is no longer so un common or considered so shocking as it may have been in the past There must, however, be very good and compelling reasons for such a departure. And. no more deviation from the rule is permissible even today than what is reasonably possible and what the circumstances of the case require imperatively for avoiding

ab surdity

12. The Notification which we have to interpret is No 905/X dated 31-3-1956 of the U. P. Government made u/s 3A of the U. P Sales Tax Act which contains the following entry as item No 6:

"Cosmetic and toilet requisites" This Notification also contains 46 other entries of quite a detailed character such as:

"Sanitary fittings" as item No, 36 "scents and perfumes" as item No 37 "soaps other than washing soaps" as item No 38

13. Our main difficulty in applying the literal rule of interpretation to item No 6 in the above mentioned Notification arises from the fact that the term "toilet" itself has a great variety of dictionary meanings Indeed, there is some difference between the meanings given in the Oxford Dictionary and the larger number of meanings given in the Webster''s Third New International Dictionary where, among its other meanings we find:

"3a: the act or process of dressing; the process of washing, grooming and arranging one''s self for the days activities or for a special occasion "

Among other meanings of the word is a bath room or lavatory fitted with "a fixture consisting typically of a water flushed bowl with a toilet seat that is used for urinating and defecation" We find that the term toilet is used for all kinds of dressing up or cleansing one''s self. It appears that the word "toilet" is derived from the French word "toilet" by which was meant a cloth of various fibres. On behalf of the State, certain obsolete meanings of the word ''toilet'' have been pointed out One of these is "the cloth or shawl put over the shoulders during shaving or hair dressing." Another archaic meaning cited was "the equipment for dressing room including dressing table" Even if we confine our attention to the wide meanings of the term ''toilet'' which are current today it would cover almost every process and means employed for dressing and for making one''s self presentable and ready for one''s delay activities or for a particular occasion. The wide meaning of the term "toilet" would include a bath room or the lavatory itself, and "toilet requisites'' could, if the wide meaning was taken, include equipment such as wash basins pipes, water taps, sprays, and sanitary fittings This brings us to the next difficulty in interpreting the word "toilet requisites" as used in the Notification This difficulty is that if the term "toilet requisites" was used in such a wide sense, a number of items in the Notification would become quite redundant and meaningless. The Notification, read as a whole, would then not make sense and appear absurd in parts

14. In an attempt to find a correct meaning of item No 6 of the above mentioned Notification we looked up the Hindi version of the Notification where we find item No. 6 mentioned as follows''

^^lkSUn;Z c/kZd vkSj lkSUn;Z izlk/ku lkefxz;ka**

This means preparations for enhancing beauty and other aids to beauty The emphasis seems to be on preparations for beautification of. the body It was contended on behalf of the assessee that the Hindi version provides the clue to the correct meaning of the terms used. It was suggested that the entry No. 6 was intended only for preparations which are used up in the actual process of application to the body as aids to beauty or in washing or dressing up one''s self or making one''s self presentable It is noteworthy that the word "toiletry" in the Websters1 Third New International Dictionary has been given the following meaning: "an article or preparation used in making one''s toilet (as a soap, lotion, cosmetics, tooth paste shaving cream, cologne)" If, therefore, the words "toilet requisites" are to be interpreted in a restricted sense, by applying the "ejusdem generis" rule we can say that they cover more than cosmetics and would include preparations such as shaving cream tooth paste, hair lotions, shampoos soap, although soap is also mentioned separately in the Notification but do not include parts of safety razors or other similar objects In other words, "toilet requisites" may be equated with "toiletry" and could include whatever'' falls under this heading Tools instruments devices like scissors clippers, razors electrical hair drying machines used in the process of hair dressing or shaving or manicure could have been easily indicated clearly or mentioned specifically as other items are mentioned in the Notification if they were intended to be covered by the Notification, the effect of which is only that sales tax is levied at a single point instead of being levied at several points. We have employed the "ejusdem generis" rule in order to cut down the ambit of the "toilet requisites" and to confine it to "toiletry" or toilet preparations, which are consumed in the process of application to the body, because this seems to be the only way out of the difficulty We have also taken into consideration the fact that the notifying authority has left Item No. 6 in the Notification vague and ambiguous and in an unsatisfactory state, If there is such a vagueness and ambiguity it has to be resolved in favour of the assessee if that is reasonably possible.

15. It may be mentioned that, although we have not applied the literal rule of interpretation in the present case, we have applied what is called the "Golden Rule" of interpretation thus stated by Lord Wensleydale in Grey v. Pearson (1857) 6 HLC 61

"In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency but no further"

16. The literal rule of interpretation is enough to meet cases of interpretation where no complexities are present But, in a case where the situation is complicated by features which make it impossible to apply the literal rule reasonably, other rules of interpretation which may be applicable have to be

used. What is known as the "Golden Rule" generally involves an application of several rules of interpretation in order to set the final result.