(1994) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : T.R.C. No. 99 of 1991

Prakash Agencies APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 20-06-1994

Acts Referred:

Citation : (1995) 1 AnWR 12 : (1994) 95 STC 544

Hon'ble Judges : S.S. Mohammed Quadri, J;P.L.N. Sarma, J

Bench : Division Bench

Advocate : P. Girish Kumar, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The short but interesting question that arises for consideration in this T.R.C. is whether "Rita" falls under item 36 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act").

2. The original authority assessed the petitioner-assessee on the turnover of Rita amounting to less than rupees two lakhs at the rate of 10 per cent taking the view that it falls under item 36. The petitioner carried the matter in appeal to the Appellate Deputy Commissioner contending that it does not fall under item 36, that it falls under general item, that it would be entitled to an exemption as the total turnover is less than two lakh rupees and that even if it exceeds two lakh rupees the rate applicable to it would be only 5 per cent and not 10 per cent as levied. The appeal was dismissed. The matter was further carried in appeal to the Sales Tax Appellate Tribunal. The Tribunal by order dated November 15, 1990, dismissed the appeal. As against that order of the Tribunal the present revision has been filed.

3. Shri Girish Kumar, learned counsel for the petitioner, contends that Rita, which is a liquid concentrate, cannot be used or applied to the hair in its original state; it has to be mixed with coconut oil or gingelly or mustard oil. Therefore, it cannot

be treated as hair lotion, hair oil or hair tonic. He also contends that the classification made by the assessing authority as confirmed in the appeals was incorrect in law. He relied upon the judgments of Kerala, Bombay and Madras High Courts.

4. The learned Government Pleader supports the order of the Tribunal submitting that Rita is a hair tonic and it is only for the purpose of diluting it, in order to apply on the hair, it is mixed with other oils. Therefore it falls under item 36 of the First Schedule.

5. We may refer here to entry 36 of the First Schedule to the Act :

-- Sl. Description of goods Code No. No. -- "36. Cosmetics and toilet preparations namely face 1036 powders, talcum powders, hair tonics, hair oils, hair lotion, face creams and snows, pomades, depilatories, tooth-powder, tooth-pastes and tooth-brushes." --

6. Item 36 includes cosmetics and toilet preparations, hair tonics, hair oils and hair lotions. From the literature produced before the Tribunal it was found :

"Rita is an excellent hair dresser heavily concentrated and pleasantly perfumed. It ensures luxurious natural growth of hair and also gives a cooling effect. Mix the contents in 5 to 10 times of coconut, gingelly or mustard oil. Dress your hair regularly. Rita is ideal for both men and women."

7. From the above findings which are based on the literature supplied by the petitioner it is evident that it satisfies the requirements of both hair tonic as well as cosmetics.

8. We may now refer to the judgments of various High Courts relied upon by the learned counsel for the petitioner.

9. In Deputy Commissioner of Sales Tax v. Sukumaran [1989] 74 STC 185, the first case relied on by the learned counsel, the question before a Division Bench of the Kerala High Court was whether "Rasna" falls within the meaning of entry 25-P of the First Schedule to the Kerala General Sales Tax Act, 1963. The Division Bench held that it did not. A perusal of the judgment shows that the case turned on the wording of the entry. To bring "Rasna" within the meaning of that entry it was necessary to show that it was a non-alcoholic drink and beverage bottled or canned and sold under a brand name. Therefore, the said judgment, in our view, does not help the petitioner in any way.

10. In Commissioner of Sales Tax v. Gordhandas Tokersey [1983] 52 STC 381 the second case relied on by the learned counsel for the petitioner, the question before a Division Bench of the Bombay High Court was whether sandalwood and sandalwood oil fall within entry 19 of Schedule "E" to the Bombay Sales Tax Act,

1959. The learned Judges held that neither sandalwood nor sandalwood oil were perfumes falling within entry 19 of Schedule "E" to the Act. The Bench also held that the definition of the word "perfume" in entry 19 refers to such preparations as are commonly known in the market for use on the body as perfumes and as sandalwood and sandalwood oil were not used as perfumes in its natural state they could not be classified as perfumes. The Bench also observed that everything possessing fragrance need not be necessarily a perfume. The principle laid down in that case does not in any way advance the case of the petitioner.

11. In Boake Roberts and Co. (India) Ltd. v. Board of Revenue [1978] 42 STC 270, the third and the last case relied on by the learned counsel for the petitioner, the question before a Division Bench of the Madras High Court was whether the synthetic essential oils used for preparation of toilet articles like soap, powder, etc., fall within entry 51 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. The Bench applied the rule of ejusdem generis and held that in construing an item in entry 51, the courts should not disregard the effect arising from the association of that item with other items and the limitation or expansion of the meaning of that item by such association. The mere fact that an article would emanate the same type of fragrance or odour would not bring the items in question within the meaning of entry 51 of that Act. The principle laid down in that case also does not advance in any way the case of the petitioner.

12. From the above discussion what follows is that, to consider whether an item falls within the meaning of an entry of a Schedule to an Act, it has to be seen whether its qualities would fall in any one of the entries or in any one of the items included in that entry. We may now consider whether "Rita" falls within the meaning of item 36 of the First Schedule to the Act or not. We have already pointed out supra that "Rita" has all the qualities of hair tonics and cosmetics. Therefore, it falls within entry 36 of the First Schedule to the Act. In this view of the matter, we find no legal infirmity or illegality in the order of the Tribunal. The T.R.C. fails and accordingly it is dismissed but in the circumstances without costs.

13. Petition dismissed.

