(1975) 11 MAD CK 0030

In the Madras High Court

Case No : T.C. No''s. 466 and 467 of 1970

Prakash Stores APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 12-11-1975

Acts Referred:

Citation : (1976) 38 STC 300

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : S.V. Subramaniam, for Subbaraya Aiyar, Sethuraman and Padma-Nabhan, for the Appellant; K. Venkataswami, Additional Government Pleader No. I, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—The petitioner-assessee sold what is described as royal series musk and some others described as cobra brand, jasmine, etc., manufactured by S.K. Kelkar & Co. Private Ltd., Bombay. When the turnover relating to these was sought to be taxed at single point as scent or perfume falling under entry 51 of the First Schedule to the Sales Tax Act, the assessee contended that these were mainly used for the manufacture of scented sticks, that they are raw materials for the scented sticks, that normally they are unfit to be used on human bodies and that, therefore, they could not be classified as scents or perfumes within the meaning of that entry. The assessing authorities held that though it might form raw material for the scented sticks, the goods as such will also come under the description of scent or perfume under the said entry 51. In that view, they determined the turnover as liable for payment of sales tax at single point. In these revision petitions, the learned counsel for the assessee contended that normally scents or perfumes are those goods, which have a basic element of alcohol and mere sweet smelling or its use in the manufacture of other perfumes would not make it a scent or a perfume. He further contended that the goods in question are free from alcohol and normally a basic element of oil is included in that and that, therefore, could not come within the description of scent or perfume. In this connection, he also relied on the decision of this court reported in Mettur Sandalwood Oil Co. v. State of Madras [1965] 16 S.T.C. 9., which dealt with the case of sandalwood oil. This court held that the constituents of a perfume are three-fold : (i) a vehicle or solvent, (ii) a fixative, and (iii) an odoriferous element. The odoriferous element in sandalwood oil was found to vaporise at temperatures ranging from 285 to 290? C. Therefore, though sandalwood oil can serve as a fixative or odoriferous element because of its vaporisation only at high temperature it was held that it could not serve as a perfume in the ordinary as well as the technical sense of the term. The test propounded in this decision is, of course, too technical and require a lot of material before a particular article could be determined as scent or perfume. But the Supreme Court in a later decision in Commissioner of Sales Tax v. Indian Herbs Research & Supply Co. [1970] 25 S.T.C. 151 (S.C.). had laid down a much simpler test in rejecting the argument that perfume would take in only substances, which emit fragrance in their natural state and would not include those which produce fragrance as a result of application of heat or the application of some foreign matter to induce the chemical reaction, which would result in the odours being released from the substance. The Supreme Court observed :

We are accordingly of the opinion that the word ''perfume''...should be construed in its ordinary sense, i.e., any substance natural or prepared, which emits or is capable of emitting an agreeable odour either when burned or by the application of some foreign matter to induce any chemical reaction which results in fragrant odours being released from that substance.

2. The Supreme Court was concerned with the question as to whether dhoop or dhoopbatti would be a perfume. The argument of the learned counsel for the assessee that in order to bring it within the word "scent" or "perfume", the particular article must be capable of vaporisation at the ordinary or normal temperature of the atmosphere, therefore, could not be accepted. Dhoop or dhoopbattis do not vaporate under atmospheric temperature alone. Therefore, that could not be put as a test by itself though that might also be a relevant test. In this case, the Tribunal had tested the sample and before us also the sample of these articles were produced. We find that it emanates a sweet and pleasant smell and it does not also appear to require sufficient heat for the odoriferous element to evaporate. Therefore, even the test propounded by this court in the decision, Mettur Sandalwood Oil Co. v. State of Madras [1965] 16 S.T.C. 9. is satisfied. We, accordingly, hold that the articles in question are perfumes within the meaning of entry 51 of the First Schedule to the Sales Tax Act. We, accordingly, dismiss the petitions with costs. Counsel''s fee Rs. 150 each.

