(1982) 12 AP CK 0022

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 83 of 1978

Raja Agencies APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 06-12-1982

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22

Citation : (1983) 53 STC 238

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : A.V.S. Ramakrishnaiah and A. Krishnaiah, for N. Ramamohana Rao, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—The only question raised for our consideration in this case is whether "Robin Blue" is a soap and fell under entry 48, as it stood at the relevant time. At the relevant time entry 48 contained only one word "soap". The assessee''s contention was that Robin Blue is a soap, since it is used as a washing material to give brightness to the clothes, and to white clothes in particular. All the authorities have uniformly rejected this contention and we see no grounds to take a different view.

2. Mr. A. V. S. Ramakrishnaiah, the learned counsel for the petitioner, relied upon certain decisions in support of his contention, to which a brief reference is necessary. In Hindustan Agencies v. Deputy Commissioner (CT) [1977] 40 STC 384, "Vim" was held to be a "soap". Similarly in State of Gujarat Vs. Prakash Trading Co., Ahmedabad, the Supreme Court held that "shampoo" is a "soap". We do not think these decisions in any manner advance his case. A soap may be in a liquid form or in the form of a cake or in the form of grains/powder, as the case may be. So long as the article performs the functions which are normally associated in the common man''s mind with a soap, it would be a soap. But it cannot be said that "Robin Blue" performs the same function as a soap or is understood as a substitute for the soap, in the common man''s mind. "Robin Blue

does not clean at all. It only adds brightness to white clothes. It is a blue powder which is mixed in the water and the clothes, after they are washed, are dipped in such water. The blueness adds to the whiteness of the clothes. For that reason, it cannot be said that it is a soap. We may give an illustration to drive home our point. In the case of certain clothes like khadi, starch is used to stiffen the clothes. For that reason it cannot be said that starch is a soap. These agents are used either for stiffening or for brightening. They do not perform the same function, nor even a part of the function of a soap; they are not, really speaking, cleaning agents.

3. The learned counsel for the petitioner also relied upon a decision of the Allahabad High Court in Har Narain Purshottam Dass v. Commissioner, Sales Tax [1971] 28 STC 77, where "Tinopal" was held to fall under the entry "chemicals of all kinds". The question there was whether "Tinopal" falls under the entry "chemicals of all kinds" or does it fall under the specific classification of "washing material". The Allahabad High Court did not consider the question whether "Tinopal" falls under the entry "soaps" nor did it hold that "Tinopal" can be equated to or considered as a soap.

4. The learned counsel for the petitioner also relied upon Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, to show that the dryer felts made out of cotton or woollen yarn by the process of weaving according to the warp and woof pattern and commonly used as absorbents of moisture in the process of manufacture in paper manufacturing units fall within the ordinary and common parlance meaning of the word "textiles" in item 30 of Schedule B to the Punjab General Sales Tax Act, 1948. We, however, think that even applying the common man''s understanding test, it is difficult to hold that "Robin Blue" is a soap.

5. Accordingly we see no grounds to take a different view than that of the Tribunal.

6. The learned counsel sought to argue that "Robin Blue" is a colour and falls within entry 45 of the First Schedule of the A.P. General Sales Tax Act. But we find that this question was not raised before any of the departmental authorities or the Tribunal. For deciding this question we have to find the components of the goods concerned herein and there is no such material before us. The learned standing counsel for the department brings to our notice explanation 4 to the First Schedule to the Act which says that the expression "colours" in item 45 of the First Schedule does not include "dyes and chemicals". The question would arise whether the goods concerned here are chemicals or not. These are all the aspects which have to be decided after gathering the requisite factual basis. In the absence of any such factual basis we are not inclined to allow the counsel to raise this question for the first time in this revision case. It may be noted that u/s 22 of the Andhra Pradesh General Sales Tax Act, this Court can interfere only on two grounds, namely, that the Tribunal has decided a question of law erroneously or has failed to decide a question of law. When this alternative contention was not at all raised before the Tribunal, we cannot hold that it has

failed to decide that question.

7. The tax revision case accordingly fails and is dismissed, but without costs. Advocate''s fee Rs. 250.

