(1968) 02 BOM CK 0006

In the Bombay High Court

Case No : Sales Tax References No''s. 20, 21 and 22 of 1965

Ramtirth Yogashram APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 02-02-1968

Acts Referred:
Bombay Sales Tax Act, 1953 — Section 34

Citation : (1968) 22 STC 76

Hon'ble Judges : Vimadalal, J;N.L. Abhyankar, J

Bench : Division Bench

Advocate : R.V. Patel, J.K. Sheth and V.P. Vyas, for the Appellant; H.D. Banaji and S.N. Naik, for the Respondent

Judgement

Vimadalal, J.—These are references u/s 34 of the Bombay Sales Tax Act, 1953, by the applicants who are the manufacturers of a commodity called the Ramtirth Brahmi Oil. Each of these three references relates to a different year, but the question which has been referred to us in the three references is identical, and we must, therefore, proceed to dispose them of by a common judgment. That question is as follows :-

"Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in coming to the conclusion that the Ramtirth Brahmi Oil is a perfumed oil ?"

2. The Sales Tax Authorities have purported to tax the oil in question under entry 39 of Schedule B to the Bombay Sales Tax Act, 1953, which is in the following terms :-

"39. Toilet articles except such articles as may be specified by the State Government by notification in the Official Gazette."

3. As the Court is concerned in the present references with the period between the 1st of April, 1954, and the 31st of March, 1957, it is common ground that the relevant notification for purposes of the present references is the one dated 19th

November, 1954, which is in the following terms :

"No. STA. 1054-XII - In pursuance of the provisions of entry 39 of Schedule B to the Bombay Sales Tax Act, 1953 (Bom. 3 of 1953), and in supersession of Government Notifications .... the Government of Bombay is pleased to specify the following articles for the purposes of the said entry 39, namely :-

1. Oils for toilet use except perfumed oils;

2. ...."

4. The position, therefore, is that, by virtue of the said notification read with the said entry 39, all oils for toilet use are exempt from taxation under the said entry 39, unless they fall within the category of "perfumed oils". According to the applicants the Ramtirth Brahmi Oil is not a perfumed oil, and, therefore, does not fall within the said entry 39 read with the said notification dated 19th November, 1954, but falls under the residuary entry 80 in Schedule B to the Bombay Sales Tax Act, 1953, which would attract a lower rate of sales tax. It is conceded by the applicants that the Ramtirth Brahmi Oil is a toilet article, but what they dispute is that it is a "perfumed oil". Mr. Patel has, in that connection, referred us, in the first instance, to the advertisements which were produced before the taxing authorities, but we are afraid, the mode in which a person may choose to advertise his commodity cannot be decisive in determining its real nature. Mr. Patel has next relied upon the Test Report obtained by his clients from the Industrial Research Laboratories which is a Government Institution. From the said Test Report it appears that two tests were carried out on the sample of Ramtirth Brahmi Oil which was submitted for analysis to the said laboratories. One was the steaming and distillation test, and the other was the alcoholic test, and the result of both those tests was stated in the said report as being that the Ramtirth Brahmi Oil did "not contain any added perfume or compound with pleasant odour". Mr. Banaji has, however, contended, on the strength of two authorities which were cited by him, one of the Madhya Pradesh High Court in Commissioner of Sales Tax, Madhya Pradesh, Indore v. Shri Sadhna Aushadhalaya [1963] 14 S.T.C. 813 and the other of the Supreme Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola, and Another [1961] 12 S.T.C. 286, that items in the Sales Tax Act must be construed not in any technical sense, nor from any scientific point of view, but as understood in common parlance. We do not think it necessary to refer to those authorities, as, in our opinion, whichever way the question is considered, whether on the basis of the said Test Report, or from the point of view of common parlance, it must be held that the Ramtirth Brahmi Oil is not "perfumed oil" within the terms of the said notification dated 19th November, 1954. The word "perfume", as a verb, is defined in the Shorter Oxford English Dictionary to which we may resort for the purpose of finding out its meaning as a matter of plain language as meaning "to impart a sweet scent to", omitting other meanings mentioned therein which are inapplicable to the present case. It is, therefore, clear that when the word "perfume" is used as a verb, it connotes a positive act of imparting perfume to

something, and that, in our opinion, would particularly be so, when it is used in the past tense as "perfumed oil". That expression must connote an oil to which perfume has been imparted by way of a positive and deliberate act, and not as meaning an article which just happens to have a perfume. Apart from this meaning which we give to the expression "perfumed oil" as a matter of plain language, the same conclusion would follow even if one looks at the object in taxing only perfumed oil, and excluding from taxation all other oils for toilet use. It is clear that medicinal and other preparations which may have a salutary effect on the health of consumers should not be taxed, but oils used for toilet purposes which are merely perfumed for the purpose of, what may be said to be, alluring customers into using them, though they have no other medicinal properties, should be taxed. It is, therefore, quite clear that if one has regard to the object which underlies the distinction that is sought to be made between perfumed oils on the one hand, and all other oils for toilet use on the other, it fortifies the construction which we have placed upon the expression "perfumed oil" as a matter of plain language.

5. In the light of this construction of the expression "perfumed oil", we must now turn to the ingredients of the Ramtirth Brahmi Oil which are stated in paragraph 8 of the Tribunal''s order itself. After setting out the ingredients, the Tribunal has proceeded to state that some of those ingredients are known for their quality of perfume, and it has specified 5 of those ingredients as possessing that quality. The Tribunal has, however, proceeded to state in the next paragraph as follows :-

"All the ingredients used for making oil may have medicinal properties but some of the ingredients are specially known for perfume and when they are used in preparing Brahmi Oil and when the oil gives pleasant odour, the only inevitable conclusion is that the Ramtirth Brahmi Oil is a perfumed oil."

6. There is a clear fallacy underlying this conclusion of the Tribunal, in view of the construction which we have placed upon the expression "perfumed oil" in the preceding paragraph. Apart from that, it is quite clear that there is nothing in the order of the Tribunal by way of a finding of fact to show that all the ingredients which have been listed in its order do not have medicinal properties. In fact, the sentence quoted by us above from its judgment would indicate that the Tribunal has proceeded on the footing that all those ingredients do have medicinal properties, but has said that, since some of them also have the quality of perfume, the resultant product, viz., the Ramtirth Brahmi Oil, must be held to be perfumed oil. We cannot accept that conclusion of the Tribunal. In the concluding portion of the order of the Tribunal, it is stated that a sample of the oil was shown to it, and the Tribunal was satisfied that the oil in question was scented with perfume, but we are afraid, the Tribunal cannot proceed to decide the case on its own opinion about the product as produced before it. The position, therefore, is that it must be held that the Ramtirth Brahmi Oil does not possess any ingredients which have been added, only on account of their quality of perfume. If some of them have, in addition to their medicinal properties, the

quality of some sort of perfume, it cannot lead to the result that, by incorporating those ingredients, the applicants have "perfumed" the oil.

7. In the result, we answer the question referred to us in the negative. The respondent must pay the applicants'' costs fixed at Rs. 250 as one set of costs in all the three references. We direct that the deposit of Rs. 100 made by the applicants in each of the references be refunded to them.

8. References answered accordingly.

