(1982) 04 AHC CK 0088

In the Allahabad High Court

Case No : Sales Tax Revision No. 415 of 1981

Rashtra Deep Laboratory APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 26-04-1982

Acts Referred:
Drugs and Cosmetics Act, 1940 — Section 16

Citation : (1983) 53 STC 419

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Sudhir Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—M/s. Rashtra Deep Laboratory, Firozabad, is the applicant in this Court in the present revision u/s 11(1) of the U. P. Sales Tax Act. It has assailed the view taken by the Sales Tax Tribunal, Kanpur, that the turnover of "water for injection" manufactured by it during the year 1974-75 was liable to tax at the rate of 7 per cent as an unclassified item and not at the lower rate of 3 per cent as being a medicine or pharmaceutical preparation as provided in Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971, issued in exercise of the powers u/s 3-A of the Act. The Assistant Commissioner (Judicial) Sales Tax had held it taxable at the lower rate and had, differing from the view taken by the assessing authority that it was taxable as an unclassified item, granted relief to the dealer.

2. It has been noticed by the Tribunal in its order that the applicant manufactures and deals in medicines and water for injection. It has held that water for injection admittedly being sterilised distilled water free from pyrogens even after redistillation, remained distilled water. By itself, water for injection had no pharmaceutical or medicinal properties and could not be treated as a drug or medicine or pharmaceutical preparation.

3. In Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, , it was ruled that:

...in determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted. As sales tax the liability falls on the seller, who in his turn passes it on to the consumer. As purchase tax, the liability falls directly on the purchaser. A long train of authorities supports that view, and we need refer only to the recent judgment of this Court in Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , in which reference has been made to some of them." Likewise, in Indo International Industries v. Commissioner of Sales Tax, U.P. 1981 UPTC 481 (SC), the Supreme Court observed (in paragraphs 4 and 5 of the Reports) that:

It is well-settled that in interpreting items in statutes like the Excise Tax Act,or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted...Having regard to the aforesaid well-settled test the question is whether clinical syringes could be regarded as ''glassware'' falling within entry 39 of the First Schedule to the Act ? It is true that the dictionary meaning of the expression ''glassware'' is ''articles made of glass'' (see Webster''s New World Dictionary). However, in commercial sense glassware would never comprise articles like clinical syringes, thermometers, lactometers and the like which have specialised significance and utility. In popular or commercial parlance a general merchant dealing in ''glassware'' does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc., which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee. It is equally unlikely that a consumer would ask for such articles from a glassware shop. In popular sense when one talks of glassware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one''s mind. Applying the aforesaid test,...which the assessee manufactures and sells cannot be considered as ''glassware''....

4. Section 4 of the Act lays down that no tax shall be levied on the sale and purchase of water, amongst other things. Explanation to this section, in so far as it was material, is in these terms :

Explanation.-In this section, the expression-

(a) ''water'' does not include mineral water, aerated water, tonic water, distilled water or scented water.

5. In the present case, the applicant does not contend that water for injection marketed by it is exempt from the levy of sales tax under this provision.

6. In H.T. Chemical Laboratories v. State of U.P. [1972] 29 STC 148, a Division Bench of this Court was called upon to consider the question whether distilled water was a medicine or a pharmaceutical preparation so as to attract the taxing provisions under the U.P. Sales Tax Act. The case of the department was that a notification dated 10th May, 1956, which levied tax on the sale of medicine and pharmaceutical preparations at the point of sale by manufacturer or importer justified the levy of tax upon the applicant. The Bench negatived this explanation by observing thus :

In our opinion, distilled water is nothing but a purified form of water. The process of distillation does not change its nature, nor does it involve any process of manufacture. Distillation is a process by which impurities from water are removed so that it can safely be used for diluting medicines while preparing mixtures and for certain injections. By itself the distilled water has no pharmaceutical or medicinal properties. Its use in medicines and pharmaceutical preparations does not make it a medicinal or pharmaceutical preparation. In fact distilled water is used in many other ways, such as in motor car batteries.

We are clearly of opinion that distilled water is neither a medicine nor a pharmaceutical preparation, nor indeed, is it prepared through any manufacturing process. The notification in question has no application whatsoever.

7. In Chandausi Chemicals v. Commissioner of Sales Tax 1980 UPTC 1201, the question that came up for consideration before this Court was whether the water for injection was exempt u/s 4 of the Act. R. R. Rastogi, J., who decided that case held that water for injection was sterilised distilled water and was intended for parenteral administration and in other sterile products. It will be covered under the expression "distilled water" occurring in Clause (a) of Section 4 of the Act. The case of the dealer before Rastogi, J., was that water for injection was exempt from levy of tax u/s 4 of the Act.

8. In arriving at its conclusion that water for injection was distilled water (and not a medicine or pharmaceutical preparation), the Tribunal relied upon these two decisions of this Court and negatived the claim of the applicant for levy of tax on the lower rate.

9. The contention of Shri Sudhir Agarwal for the applicant-dealer has been that the decisions on which reliance was placed by the Tribunal were not apposite to the present case wherein the contention of the dealer was not in regard to claim of exemption from levy of tax u/s 4 of the Act but the issue was whether the

product manufactured and marketed by the dealer was a product which could be covered by the description "medicines and pharmaceutical preparations" within the meaning of the notification dated 15th November, 1971.

10. The basic question which was up for consideration by the authorities in the present case clearly was whether the product "water for injection" manufactured and marketed by the dealer was one which fell in the description of medicines or pharmaceutical preparations, rendering it to be taxed at the lower rate. This question obviously was not agitated before or considered by this Court in the two decisions aforesaid.

11. The Drugs and Cosmetics Act, 1940 (Central Act No. 23 of 1940), controls the import, manufacture, distribution and sale of drugs or cosmetics. In Section 3(b) it describes "drug" as including all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals. Section 18 of this Act requires a person not to manufacture for sale, or sell or stock or exhibit for sale or distribute any drug except in accordance with the conditions of a licence issued for the purpose. Rules have been framed by the Central Government for the purpose of giving effect to the provisions of the chapter, in which occurs Section 18, in exercise of the powers u/s 33 of the Act and Rule 61(2) of the Drugs and Cosmetics Rules, 1945, so framed provides for a licence to sell or exhibit for sale or distribute drugs specified in Schedules C and C(1) by retail. Schedule C, forming part of these Rules mentions amongst others (at item No. 12), "any other preparation which is meant for parenteral administration as such or after being made up with a solvent or medium or any other sterile product....

12. It is not in dispute that water for injection cannot be stocked for sale except under a licence granted under the provisions of the Drugs and Cosmetics Act and the Rules framed thereunder. It is common knowledge that water for injection is available from chemists, and druggists and is not an article which is offered for sale by other vendors.

13. Water for injection undoubtedly is distilled water in the broader sense of that word. Nevertheless it is a specific variety of distilled water which is specially prepared for use as a solvent for injectible medicines. It may not be a medicine in the strict sense of the term as defined in English language dictionaries.

14. Section 16 of the Drugs and Cosmetics Act provides that the expression "standards of quality" for the purposes of the chapter dealing with the manufacture, sale and distribution of drugs shall, in relation to a drug, mean that the drug complies with the standard set out in the Second Schedule of the Act. The Second Schedule, in turn, after mentioning some drugs specifically, provides at item No. 5 for drugs included in the Indian Pharmacopoeia and lays down, for standards of identity, purity and strength specified in the edition in the Indian Pharmacopoeia for the time being and such other standards as may be

prescribed. In regard to drugs not included in the English Pharmacopoeia, it lays down standards which are provided for them in any pharmacopoeia of any other contry.

15. The pharmacopoeia of India (The Indian Pharmacopoeia) makes a specific reference to water for injection and lays down the standard for it. Inasmuch as the Indian Pharmacopoeia dealing primarily with medicines and drugs, mentions water for injection and the standards for it, it is obvious that water for injection in one of the products concerned with use as an aid to treatment of ailment and for alleviating physical human sufferings.

16. It has been contended on behalf of the department that the Drugs and Cosmetics Act deals not only with medicines but also with other commodities and further that the English Pharmacopoeia, like the British Pharmacopoeia provides for standards in respect of various varieties of water like aromatic or distilled water, the mere mention of water for injection therein cannot be treated to be a reference to it as a drug or medicine. It has also been urged that assuming that for purposes of the Drugs and Cosmetics Act and the English Pharmacopoeia, water for injection may be a drug, yet, for purposes of the U.P. Sales Tax Act, that would not be material. It has been urged that the definition of an expression in one Act cannot be read into another and reliance in this regard has been placed on decision of the Supreme Court in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, . The submission further is that as far as this Court is concerned, the question is concluded against the applicant-dealer by the two decisions noticed earlier.

17. So far as the two decisions of this Court are concerned, it has been seen above that the question which is being agitated in the present case was not up for consideration in them. In the first of those decisions, the question was whether distilled water was liable to be taxed as medicine or a pharmaceutical preparation. The case related to the year 1967-68. This Court took the view that distilled water was nothing but water within the meaning of Section 4 of the Act. Soon after the decision, which was rendered in the year 1971, Section 4 was substituted with retrospective effect from 31st March, 1956, by U.P. Act No. 8 of 1975 and the explanation excluding distilled water from the definition of expression "water" was brought on the statute book.

18. The second case concerned itself with the question whether water for injection was a commodity subject to tax under the amended Section 4 or not. This Court held that it was so as it was covered by the expression "distilled water".

19. In Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , the question for determination was whether "dryer felts" manufactured by the assessee fell within the category of "all varieties of cotton, woollen or silken textiles" within the meaning of item No. 30 of Schedule B to the Punjab General Sales Tax Act. The Supreme Court, after quoting Bolmes, J., that "a word is not a crystal,

transparent and unchanged ; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used", (in paragraph 6 of the Reports) observed that "the word ''textile'' is not sought by the assessee to be given a scientific or technical meaning" and that "our minds are conditioned by old and antequated notions of what are textiles and, therefore, it may sound a little strange to regard ''dryer felts'' as ''textiles''. But it must be remembered that the concept of ''textiles'' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content..." and, later referred to the Customs Tariff Act of 1975 for giving dryer felt a meaning including it amongst textiles. It is obvious that the Supreme Court has itself looked into cognate statutes while finding out the meaning to be given to a commodity for purposes of a taxing statute like the Punjab General Sales Tax Act. Following this decision, this Court also did so in Commissioner of Sales Tax v. Arora Material Store 1982 STJ 119.

20. Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, was a case wherein the question was whether the Delhi Development Authority was a local authority of which employees were outside the purview of the Bonus Act, 1965. The Delhi High Court had borrowed the definition of "local authority" from enactments like the Cattle Trespass Act, 1871, for the Payment of Bonus Act did not contain a definition of the expression "local authority". The Supreme Court took the view that in a case like the one before it aid could only be taken of the definition of the expression "local authority" contained in the General Clauses Act and in that context observed that the definition of an expression in one Act should not be imported into another. The principle of that case cannot legitimately be imported in a case like the present which is concerned with a taxing statute in which case the Supreme Court has itself made reference to cognate Acts for finding out the true meaning to be given to a commodity sought to be subjected to tax.

21. The Tribunal has observed in its order, at one place, that in common parlance also it (water for injection) is never called a drug or a medicine. It has not dealt with the matter any further. It is not possible, therefore, to take this observation as a conclusion of fact arrived at by the Tribunal on consideration of relevant material as is attempted to be urged by the learned standing counsel. In fact, the Tribunal has not gone into the question from this point of view at all.

22. The concept of medicine is not static. It is a changing concept linked with the advancing human knowledge and its endeavour to alleviate human suffering. It is also changing with the change in social thinking of a community with a view to solve its problems. Thus viewed, the term "medicine" cannot be confined within the traditional concept of an article which, by itself, is enough to cure a human ailment. This Court has accepted departure from the traditional concept of medicine for purposes of the U.P. Sales Tax Act when it held that tartaric acid which, in the broader sense, is a chemical, is medicine (see Commissioner of

Sales Tax, U.P. v. Fadral Chemical Works Ltd. 1980 UPTC 552 and is taxable as a medicine and not as a chemical.

23. Viewed in any light, water for injection is taxable at the lower rate as comprised within the entry "medicines and pharmaceutical preparations" and not as an unclassified item. In taking a view to the contrary the Tribunal has committed an error in law. Its order cannot be upheld.

24. The revision succeeds. The order of the Tribunal is set aside and it is held that "water for injection" is a commodity of which turnover was assessable to tax at the lower rate as a medicine within the entry "medicines and pharmaceutical preparations".

25. Parties shall bear their own costs.