(1968) 06 GUJ CK 0004

In the Gujarat High Court

Case No : Sales Tax Reference No. 2 of 1966

State of Gujarat APPELLANT

Vs

Hindustan Traders, Rajkot RESPONDENT

Date of Decision : 21-06-1968

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 52

Citation : (1969) 24 STC 103

Hon'ble Judges : R.B. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, A.G. and H.V. Chhatrapati instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; D.D. Vyas, for the Respondent

Judgement

Mehta, J.—The short question which arises in this reference is :-

"Whether a shaving brush sold under cash memo. No. R. 6356 dated the 28th of August, 1953, is a toilet article within the meaning of entry 21A of Schedule E, and is taxable as such ?"

2. In the application u/s 52 of the Bombay Sales Tax Act, 1959, hereinafter referred to as "the Act", the Deputy Commissioner of Sales Tax took the view that a shaving brush is a toilet article, while in appeal the Tribunal held that a shaving brush did not have any direct toilet effect and was not a toilet article and the Tribunal, therefore, held that the sale was not covered by entry 21A but by the residuary entry 22 of Schedule E. The Tribunal has, therefore, made the present reference.

3. Entry 21A reads as under :

"Toilet articles including hair cream and hair tonic; and perfumes, depilatories and cosmetics (except soap as specified in entry 28 in Schedule C and hair combs as specified in entry 3D of this Schedule and hair-oil as specified in entry 7 of this Schedule)."

4. When we read this entry, it is clear that it refers to all toilet articles and the inclusion is made of hair cream, hair tonics, perfumes and depilatories and cosmetics. These articles have been specifically included by the Legislature under the head "toilet articles". On the other hand, the exclusion is made of three items, namely, (1) soap as specified in entry 28 in Schedule C, (2) hair comb as specified in entry 3D of Schedule E, and (3) hair-oil as specified in entry 7 of Schedule E; on these three items, there is a lower incidence of tax. The expression "toilet article" has to be construed. The word "toilet" is used in the adjectival sense. In Webster''s New Twentieth Century Dictionary at page 1918, the following meanings are given of "toilet" :-

"(1) a covering or cloth used in shaving or hair-dressing (obsolete);

(2) a dressing-table; a toilet-table;

(3) the article used in dressing or grooming;

(4) the act or process of dressing or grooming oneself, especially, formerly, of dressing one''s hair;

(5) the mode of dressing; the style and make-up of a person''s dress; toilette; also, any specific costume; as her toilet was in good taste."

5. In fact to make one''s toilet means to bathe and dress, arrange one''s hair etc. Thereafter, toilet as an adjectival word is defined as "of or for the toilet, as toilet articles." The expression "toilet-set" is mentioned to mean "a set of articles for use in the toilet such as brushes, combs etc." "Toilet-soap" is also defined as "a hard milled soap for personal use." The expression "toilet article" would, therefore, cover articles of or for the toilet. The act or process of toilet would be the process of dressing or grooming one''s person, including dressing of one''s hair, and, therefore, toilet articles would include all the articles used in dressing or grooming, not only one''s hair but one''s person. In the present entry, the Legislature has in terms included hair cream, hair tonic, perfumes, depilatories and cosmetics which all have the effect of making the appearance more attractive or have a beautifying effect. In fact, all these articles are capable of direct use for the purpose of toilet as they directly dress or groom the person. Even when we go to the exclusion which is specifically made by the Legislature, the excluded items are soap, hair combs and hair-oil. The learned Advocate-General argued that when hair combs are specifically excluded it would mean that the Legislature had used the expression "toilet articles" in the widest sense, viz., in the sense which would cover all articles which would be directly or indirectly useful in the process of toilet, for a comb is only an accessory or indirectly useful as a toilet article. The learned Advocate-General on that basis argued that when going clean- shaved is the normal fashion of the day in the country, a shaving- brush would be one of the articles which would be normally useful for dressing or grooming a man; just like a hair comb, shaving-brushes are articles which are used for dressing or grooming a person. In view of the specific exclusion of hair combs at least, the Legislature has evinced a clear

intention of giving a very wide meaning to the expression "toilet" article. Mr. Vyas, on the other hand, argued that in a taxing statute if there is ambiguity it should be resolved in favour of the citizen, and the words should be given a strict construction and no wider meaning should be given unless the Legislature has so expressed itself or the necessity justifies that implication. Mr. Vyas is right in his argument that if we look to the words of exclusion only those items have been excluded which are all capable of directly producing the toilet effect, namely, soap, hair comb and hair-oil. We do not agree with the learned Advocate-General that hair comb has no direct toilet effect, even though hair combs are normally used for combing hair and thus grooming a person. The learned Advocate-General further argued that shaving-soap has not been excluded and if shaving-soap is a toilet article, there is no reason why a shaving-brush is not a toilet article. There can be no doubt that the soap which is used for cleaning would have toilet effect and, therefore, the shaving-soap falling under that description of soap, as a cleansing agent, would fall within the exclusion. Therefore, all those items which are excluded are clearly those items which produce direct toilet effect and which are directly used in dressing or grooming a person. A shaving-brush, on the other hand, by itself would be thoroughly useless for any toilet effect and it can never be used like a hair comb for directly dressing or grooming a person. Therefore, even if we look to the items excluded, we do not and - that the Legislature intended to give such a wide meaning to the words "toilet articles", as to take within their ambit even such articles like shaving-brushes which by themselves could never have any toilet effect. The entire entry when construed in its proper context can be given full effect on the basis that toilet articles are those articles which are directly used for toilet effect and the Tribunal was justified in not giving a wider meaning than what the Legislature has in terms intended. There is also another reason which would support this construction of the entry 21A. Mr. Vyas in this connection referred us to entry 25 of Schedule C where "razors and razor-blades" are mentioned. These items are not specifically excluded from the list of toilet articles in entry 21A. If we were to accept the argument of the learned Advocate-General that shaving-brushes are the items which would be useful like the shaving-soap, razor and razor-blades for dressing or grooming a man, it would be clear that even razor and razor-blades would fall in toilet articles. In that event, the Legislature ought to have excluded those articles as it had excluded the other items, on which there is a lower incidence of duty, and that itself makes it clear that the Legislature never intended to give such a wide meaning to the expression as is contended for by the learned Advocate-General. Therefore, the Tribunal was right in giving the expression a restricted meaning and in holding that a shaving-brush would not fall in "toilet articles". Our answer to the question, therefore, is in the negative. The reference is answered accordingly. The State shall pay the costs of this reference to the assessee.

6. Reference answered accordingly.