(1977) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 144 of 1977

Sukhu Ram Tamrakar APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 03-12-1977

Acts Referred:

Citation : AIR 1978 MP 97 : (1978) ILR (MP) 1103 : (1978) JLJ 160 : (1978) 23 MPLJ 120 : (1978) MPLJ 120 : (1978) 41 STC 376

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;Raj Krishna Tankha, J;J.P. Bajpai, J

Bench : Full Bench

Advocate : S.N. Agarwal and A.K. Khaskalam, for the Appellant; S.L. Garg, General and M.V. Tamaskar, Government Advocate, for the Respondent

Judgement

J.P. Bajpai, J.

The question referred to this Bench for answer is as below:

""'Whether colour-powders fall within Entry No. 25 of Schedule II, Part II of the M. P. General Sales Tax Act, 1958?"

The occasion for the reference arose, because of certain observations made by a Division Bench of this Court in paragraph 15 of its decision in the case of N. Ganu Bhai Vs. Commissioner of Sales Tax, , wherein it was observed that the word "dyes" should be understood as denoting that type of materials which are more or less similar to the other goods described in the said entry.

The facts relevant for the purpose of properly appreciating the respective contentions raised on behalf of the assessee and the department are that the petitioner is a kirana shop-keeper (grocer). He deals in the sale and purchase of colour-powders also. It was not disputed that the various powdered colours sold by the petitioner were used ordinarily for dyeing cloth or other articles and are quite distinct from the colour material used by textile mills for dyeing their products.

The petitioner contended before the assessing authorities and also before this Court that the colour-powders sold by him are not covered by the term "dyes" as used in Entry No. 25 of the Schedule referred above and since the colour-powders have not been specifically mentioned in any other entry, the turnover in respect of the sale of such powders could be taxed under the residuary entry in part VI Schedule II of the Act, Entry No. 25 and the residuary entry read as below:

Entry 25.

Dyes, paints, varnishes, lacquers, enamels, glue, paints brush, sand paper, turpentine oil, bale oil and polish other than boot polish.

12 per cent

(Note : - In the relevant period, it was 11 per cent in column 3)

Residuary Entry:

All other goods not included id Schedule I or any other part of this Schedule.

8 per cent

(Note : - in the relevant year, it was 7 per cent in column 3)

Before proceeding to deal with the respective contentions, it would be significant to note that earlier "dyes" were not included in Entry No. 25 prior to 15-11-1966. The entry prior to amendment was as follows:--

"Paints and varnishes including glue, polish brush, sand paper, turpentine oil, enamels, bale oil."

By amendment, "dyes" have been added and put at the beginning of the aforesaid entry. The rate of tax over the goods mentioned in Entry No. 25 is, however, higher than that applicable to the articles covered by the residuary entry.

The contention raised on behalf of the assessee is based on the following two grounds:

(i) That since the legislature has not used the words "colour-powder" and instead preferred to use the word "dyes", the colour-powder sold by grocers was not intended to be taxed as "dyes". According to the petitioner, the term "dyes" denotes only such colouring material, which is in liquid form prepared after adding certain chemicals etc. for dyeing cloth or any other articles and would not include the bare dry colour-powder;

(ii) That since "dyes" have bean included in Entry No. 25, which relates to paints, varnish, enamel, brush, sand paper etc., it should be interpreted and understood as denoting that type of material which is more or less similar to these goods like paints, varnishes etc. directly and readily usable for painting or colouring. In substance, the petitioner seeks to rely on the principles of "ejusdem generis."

On behalf of the department, the learned Advocate General contended that the principle of ejusdem generis is not of universal application. While interpreting the entries in a schedule for the purpose of ascertaining whether a particular item is covered by the same or not the meaning ascribed to a word in common parlance should be adopted and the technical meaning given to a particular word is not always material and relevant. He further contended that the colour-powders sold by the assessee, who is a kirana shopkeeper, are sold and purchased as dyes in the market and are also used as the same. According to him, the word "dyes" is a term of common use denoting colour-powders used for the purpose of colouring clothes or other material in day-to-day use and not confined to dyeing material used by textile mills etc.

Shri Agrawal, learned counsel appearing for the petitioner, quoted the meaning given to the term "dyes" in the book of Organic Chemistry and wanted to contend that only such solution, which is made by adding water and other chemicals etc. to the colour powder, can be termed as "dyes" and not the bare powder.

We are not impressed by the aforesaid argument. In our opinion, it is not possible to accept the contention raised on behalf of the petitioner. According to the common parlance, a ''dye'' is that article which can be used to impregnate tissues with colour or is able to fix itself or is being capable to fix on fibre. Merely because the colour powder is to be diluted with water or any other chemical is added for preparing an effective solution for dyeing a piece of cloth, it cannot be taken out of the category of "dyes", on the ground that it was not sold in the form of a ready-made solution. The words "dyeing", "dyer" and "dyes" are commonly understood as denoting the ordinary process of colouring clothes and such other articles by using a colour powder.

The purpose of M. P. General Sales Tax Act is to raise revenue and for this purpose various articles have been classified according to the general usage and common commercial terms denoting particular articles. Therefore, the concept of Organic Chemistry would not be conclusive for interpretation of the entries. The words and expressions in the entries contained in the schedule referred above are to be construed in the context of the meaning as understood in popular commercial sense and it would not be possible to either curtail or widen the scope either by relying on the meaning technically given to the word "dyes" in the books of Organic Chemistry or by rigidly following the dictionary meaning. Even according to the meaning given in various dictionaries, the word "dyes" includes a colouring material basically used for dyeing.

As observed in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, , it is now well settled that while interpreting various items contained in the entries made in the statutes like Sales tax Act, resort should be had not to the scientific or technical meaning of such, terms, but to their popular meaning or the meaning attributed to them by those dealing in the said commodities.

As regards the second contention, it would suffice to observe that in the context, the entries have been made and various commodities classified, there is no scope for construing the term "dyes" so as to mean and include only such articles which are similar to paint, varnish or sand-paper etc. and thereby to exclude colour-powder.

The doctrine of ejusdem generis is not an inviolable rule of law. You can be permitted to infer by applying it only in the absence of an indication to the contrary. You cannot apply the rule when the preceding words and the general words constitute description of two categories or the general words in question themselves constitute description of a distinct category.

The rule of ejusdem generis is to be applied with caution and should not be pushed too far unless we find a category covering the various items. Where the specific items mentioned in any entry contained in a schedule appended to a tax statute prescribing rates and impost of taxation on various items are clearly distinct and wide in their meaning vis-a-vis the other items, though contained in the same entry, but belonging to an altogether different category, one ought not to qualify their meaning merely on the ground that the word "dyes" has been mentioned under the entry relating to varnishes and paints. The inclusion of several articles under the same heading does not mean that they all constitute one commodity when it is apparent that a particular article belongs to a distinct category.

The aforesaid view, which we are inclined to take, finds support from the observations made by their Lordships of the Supreme Court in A. Hajee Abdul Shakoor and Company Vs. State of Madras, . In the last para at page 728 of the aforesaid case, while construing the entries relating to hides and skins, their Lordships observed as below:

"The fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing."

In view of the aforesaid observations of the Supreme Court and in the context that the Entry No. 25, as it originally stood, was confined to varnishes and paints and the item "dyes" has been added later on and apparently belongs to a category quite distinct and different from the category covering sand paper, paint brush, enamel-paint etc., the observations made by the Division Bench of this Court in N. Ganubhai''s case (1976 Tax LR 1249) (Madh Pra) in a different context cannot be relied on for narrowing down the meaning of the word "dyes". In N. Ganu Bhai''s case (1976 Tax LR 1249 (Madh Pra)), the controversy before the Court was whether Neel, a material used for brightening clothes, could be included in the term "dyes". In that context, it was observed that neither according to the common meaning attributed to the word "dyes", nor according to the dictionary meaning or the meaning given in the Organic Chemistry, it was possible to hold that the Neel is a "dye" and should be taxed accordingly. The Division Bench referred to the various meanings given for the word ''dye'' and ultimately was of the opinion that the brightening object like Neel could not be treated as an article used for impregnating tissues with any colour and therefore, cannot be regarded as colouring material. The observations made in paragraph 15 of the aforesaid judgment can, therefore, not be construed de hors of the context in which they were made and are therefore, distinguishable.

For the reasons stated above, we answer the question referred to us in affirmative and hold that colour-powders fall within the term "dyes" as contained in Entry No. 25 of Schedule II, Part II of the M. P. General Sales Tax Act and are liable to tax at the rate prescribed against the said entry.

The petition shall now be placed before the Division Bench for disposal according to law.