(2007) 06 GUJ CK 0008

In the Gujarat High Court

Case No : Sales Tax Reference No. 4 of 1998

The State of Gujarat APPELLANT

Vs

Sindh Ayurvedic Pharmacy RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 10, 18, 19A, 19B, 62

Citation : (2007) 06 GUJ CK 0008

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : S.S. Shah, GP and Jashwant K. Shah, AGP, for the Appellant;

Judgement

J.M. Panchal, J.—At the instance of Revenue, the Gujarat Sales Tax Tribunal at Ahmedabad has referred the following question of law for the opinion of this Court u/s 69 of the Gujarat Sales Tax Act, 1969 ("the Act" for short):

Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal is justified in law holding that the Gulkand manufactured and sold by the opponent is covered by entry 26(1) of Schedule-II-Part-A of the Gujarat Sales Tax Act, 1969 and not either under entry 6 of Schedule-III or under entry 13 of Schedule-III of the Act

2. The assessee, i.e. M/s. Sindh Ayurvedic Pharmacy, is engaged in the business of manufacture and selling of ayurvedic drugs and medicines. The medicines are being manufactured at Bombay where the assessee has its head-office. The assessee has a branch at Ahmedabad. It is registered as a dealer under the provisions of the Act. The dispute pertains to assessment year 1980-81. Amongst other medicines, the assessee is manufacturing Gulkand. The assessee claimed before the Sales Tax Officer that the Gulkand manufactured by it was a medicinal preparation and exigible to tax at the rate of 4% under Entry 26(1) of Schedule II-A to the Act. The claim of the assessee was accepted and accordingly, the assessment was completed. However, for Samvat year 2036, i.e. assessment

year 1981-82, the very Sales Tax Officer took a different view and recovered sales tax at the rate of 7% plus 3% surcharge (General Sales Tax) treating the Gulkand as falling within Entry 6 of Schedule III to the Act by rejecting the contention of the assessee that the Gulkand was a medicinal preparation. The above mentioned view was taken by the first appellate authority on the basis of an order dated September 14, 1977 passed by the Commissioner of Sales Tax u/s 62 of the Act.

3. Feeling aggrieved, the assessee went in appeal. The appellate authority noticed that the facts, which were mentioned in determination order passed u/s 62 of the Act by the Commissioner of Sales Tax and relied upon by the Sales Tax Officer, were quite different than the facts of the instant case and, therefore, concluded that the Sales Tax Officer was not justified in placing reliance on the said determination order for the purpose of coming to the conclusion that the assessee was liable to pay the sales tax at the rate of 7% plus 3% surcharge as provided in Entry 6 of Schedule III to the Act. In view of the said conclusion, the first appellate authority allowed the appeal filed by the assessee. Section 67 of the Act empowers the Commissioner of Sales Tax to exercise suo motu revisional powers. The Commissioner was of the opinion that the view taken by the first appellate authority was erroneous and, therefore, exercised suo motu revisional powers. In order to substantiate its claim that the Gulkand manufactured by it was a medicinal preparation, the assessee attempted to place reliance on Ayurvedic Pharmacopoeia published by the Health Ministry of the State of Government, but could not produce the same for consideration of the Revisional Authority. The Revisional Authority, after hearing the parties, noticed illegality and irregularity in the order passed by the first appellate order and, therefore, concluded that the appellate order deserved to be modified. The Revisional Authority noticed the decision of the Tribunal rendered in M/s. Raj Kamal Agency v. State of Gujarat 1979 GSTC 75 wherein the Gulkand was not treated as medicinal preparation. After following the said decision, the Revisional Authority held that the assessee was liable to pay sales tax at the rate of 7% plus 3% surcharge as contemplated by Entry 6 of Schedule III to the Act.

4. Thereupon, the assessee carried the matter before the Gujarat Sales Tax Tribunal at Ahmedabad (?Sthe Tribunal?? for short). The Tribunal by a detailed judgment running into roughly 34 pages, came to the conclusion that the Gulkand manufactured and sold by the assessee was an ayurvedic medicinal preparation, which is administered in the treatment of diseases stated in Ayurvedic Pharmacopoeia and, therefore, the Gulkand is covered by Entry 26(1) of Part-A of Schedule II to the Act and not either under Entry 6 of Schedule III or Entry 13 of Schedule III to the Act. The Revenue, therefore, filed an application before the Tribunal requesting it to refer the question of law for the opinion of the High Court. The said application was accepted by the Tribunal and that is how the question mentioned above has been referred to this Court for opinion.

5. This Court has heard Mr.Jashwant K. Shah, learned Assistant Government

Pleader, for the Revenue. The record shows that the assessee is duly served, but has not appeared before this Court either through its lawyer or through its constituted agent. This Court has also taken into consideration the documents forming part of the instant reference.

6. In order to resolve the controversy raised for consideration of the Court, it would be relevant to notice the provisions of relevant entries. Section 7 of the Act provides that sales tax shall be levied on the turnover of sales of goods specified in Part A of Schedule II at the rates set out against each of them in Column 3 thereof. It may be mentioned that Schedules I, II and III were substituted for Schedules I, II, III & IV by the Gujarat 9 of 1992, which were brought into force with effect from April 1, 1992. Entry 26 of Part-A of original Schedule-II referred to above was as under:

Sr. Description of Goods Rate of sales Rate of purchase Entry No. of Notification No. tax tax u/s 49(2)(1) 26 Drugs and medicines (other than those spec- ified in entry 12 in Schedule I and entry 96 Four paise Four paise in 83 in this Schedule) in the rupee in the rupee 7. Section 10 of the Act as it stood then provided for levy of sales tax and general sales tax on goods specified in Schedule III. It, inter alia, provided that sales tax on the turnover of sales of goods specified in Schedule III would be levied at the rates set out against each of such goods in Column No. 3 thereof. Here also, it is necessary to mention that Section 10 came to be deleted from statute-book with effect from April 1, 1992. The relevant entries in Schedule III were as under:

Sr. Description of Goods Rate of sales Rate of purchase Entry No. of Notification No. tax tax u/s 49(2)

6 Foodstuff and food provisions of all kinds (including dried fruits and dried vegetables; raw, semi-cooked, semi-processed or ready to serve foods, pickles, sauces, jams, marmalades, jellies, preserved fruit and honey Seven paise in Three paise in 80 the rupee the rupee 13 All goods other than those specified from time to time in Section 18 and 19A & 19B and in Schedules I and II and in the preceding entries Seven paise in Three paise in the rupee the rupee 8. From the judgment of the Tribunal, it is evident that the case of the Revenue Authority is that the Gulkand manufactured by the assessee should be treated as foodstuff and, therefore, would fall within Entry No. 6 of Schedule III to the Act whereas the case of assessee is that it is a medicine, which would be covered by Entry No. 26 of Part A of Schedule II to the Act and should be accordingly taxed.

9. As observed earlier, the assessee could not produce Ayurvedic Pharmacopoeia published by the Government of Gujarat to substantiate its case before the Revisional Authority that the Gulkand manufactured by it was a medicinal preparation. A copy of Ayurvedic Pharmacopoeia published by the Health Ministry of the State of Gujarat produced before the Tribunal is to be found on running page 106 of the paper-book. This publication is in Hindi and Entry No. 45 of the

said publication deals with Gulkand. A bare reading of Entry No. 45 mentioned above makes it evident that the main contents of Gulkand are rose petals one part and sugar 16 parts. The method of preparing Gulkand has been described by the Government. It is stated that this preparation is meant for curing diseases like dah, pittadosh, kabj, magaj-ki-garmi, etc. Thus, Ayurvedic Pharmacopoeia published by the Government makes it more than clear that Gulkand is a medicinal preparation for curing certain diseases. It is relevant to notice that the assessee had also produced before the Tribunal a sample jar of Gulkand manufactured and sold by it. The same indicated that preparation of the assessee contained rose petals, sugar, silver, bang-bhasma, moti, pravalpishti and galotsav. It was also mentioned on the jar that these articles were used for removing or curing constipation, taja-garmi, skin diseases, pimples, blood disorder, deficiency of vitamins B & C and insomnia. It was also mentioned on the jar that it was not an ordinary Gulkand which was being sold by the professionals like athanawala, panwala or Gandhi and was a genuine experimented medicinal preparation. Further, the advertisement in this behalf, which was published by the assessee in ?SSandesh Panchang?? for Samvat year 2045 was also produced before the Tribunal. Thus, the material produced by the assessee before the Tribunal established that the Gulkand manufactured by it was a medicinal preparation.

10. It is settled law that while considering whether a particular article is exigible to certain tax, an attempt should be made to find out whether the article is covered by any of the entries described in Schedule appended to the Act and if it is found that the article is not falling within the ambit of any of the entries then only, it has to be held that the article would fall within the residuary entry. The term medicine has nowhere been defined in the Act. The question whether a particular preparation should be regarded as medicine came up for consideration before this Court in B.Shah & Co., Surat v. State of Gujarat 28 STC 5. In that case, article involved was nycil powder. The question was whether nycil powder is medicine within the meaning of Entry 13 of the Bombay Sales Tax Act, 1959. After interpreting the word ''medicine'' with reference to dictionary meaning, the Division Bench held that the medicine is a word, which qualifies a drug indicating nothing more than a remedial agent that has the property of curing or mitigating diseases or is used for that purpose. The Division Bench noticed that in its ordinary sense as applies to human ailments, it means something which is administered, either internally or externally, in the treatment of disease or the relief of sickness. After applying the relevant test, the Division Bench held that nycil powder with its special quality and attributes, its character and composition and its recommended or intended use as advertised by the manufacturers was covered within the meaning of ''medicine'', as understood in popular parlance.

11. Applying the test laid down by the Division Bench in the above quoted decision to the facts of the case, this Court finds that medicine would mean, which is administered either internally or externally in the treatment of disease or relief of sickness. The word medicine appearing in Part A of Schedule II to the

Act will have to be interpreted not in technical sense, but as understood in common parlance, i.e. in the popular sense of it being a remedial agent. The evidence produced by the assessee makes it very clear that it is administered in the treatment of the diseases. Further, in Ayurvedic Pharmacopoeia published by the Government also, it is treated as medicinal preparation. There is no good reason for not treating the Gulkand manufactured by the assessee as medicine because it is shown that the article has capacity and capability of curing or remedying diseases and is administered in the treatment of several diseases. The Revenue could not lead any evidence before the Tribunal to establish that the Gulkand manufactured by the assessee was foodstuff within the meaning of Entry 6 of Schedule III, which now stands substituted, nor it could satisfactory plead before the Revenue that the Gulkand manufactured by the assessee would neither fall under Entry No. 26 of Part A of Schedule II to the Act or under Entry No. 6 of Schedule III to the Act and, therefore, would be governed by residuary Entry No. 13 of Schedule III to the Act. The view taken by the Tribunal on the evidence before it that the Gulkand manufactured and sold by the assessee is a medicinal preparation, which is administered in the treatment of the diseases as stated in Ayurvedic Pharmacopoeia and also the diseases described on the bottle of Gulkand sold by the assessee and, therefore, would be covered by Entry 26 of Part A of Schedule II to the Act and not under Entry No. 6 of Schedule III or Entry 13 of Schedule III to the Act, is eminently just. No ground is made out by the Revenue to take a different view of the matter and, therefore, the question of law referred to this Court for opinion will have to be answered accordingly.

For the foregoing reasons, the question of law referred to this Court for opinion is answered in affirmative, i.e. in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of. There shall be no orders as to costs.

