

(2009) 12 KAR CK 0013
In the Karnataka High Court
Case No : Writ Appeal No. 649 of 2006

The State of Karnataka

APPELLANT

Vs

Marico Industries Ltd.

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) ILR (Kar) 3932 : (2010) 2 KCCR 891

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Geetha Menon, for the Appellant; G. Rabinathan, for the Respondent

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed in W.P. No. 28125/2002 dt. 3.1.2006 is called in question this appeal,

2. The facts leading to this case are as hereunder:

The respondent is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957. The Writ Petition was filed by him challenging Entry 17-A in Part "C" of II schedule of KST Act, 1957, specifying the "coconut oil sold under the brand name inserting the same with effect from 1.4.2001 and to quash the insertion of the words "Coconut oil sold under the brand name in Entry 1 of Part "E" of the II Schedule to K.S.T. Act, w.e.f. 1.4.2001. The respondent-assessee is a dealer and selling coconut oil apart from dealing with the other products. Prior to the amendment, coconut oil sold by him in sachets or in bottles with a brand name was attracting sales tax at 4% in Sl. 1 of part-E of the II Schedule of the K.S.T. Act. On account of the amendment, coconut oil sold would attract the higher rate at 15% w.e.f. 1.4.2001 and attracts 20% w.e.f. 1.4.2002. The learned Judge after considering the case of the parties elaborately has granted relief to the assessee on the ground that the Entry 17-A in part-C of the II schedule as unconstitutional, discriminatory and violative of Article 14 of the Constitution of India, so far as the coconut oil sold under the brand name, either

in sachets or in bottles. This order is called in question in this appeal.

3. Though several grounds are urged by the appellants, at the time of arguments, the learned Government Advocate submits that the learned Judge has committed an error in granting relief to the respondent-assessee in quashing the notification. According to her, 95 to 96% of the coconut oil produced by the manufacturer and sold under the brand name, would be used for toilet purpose (as hair oil). But in the coastal belt 3 to 4% of the people would use the coconut oil as an edible oil. Therefore, she contends that there is a difference between the using of the coconut oil in the coastal belt and in the remaining parts. She further contends even people in and around the coastal belt is also using the coconut oil as hair oil. Considering the background it was for the legislature to bring an amendment to brought the coconut oil under higher taxation side considering the nature of products which is used as toilet articles.

4. The Learned Counsel for the respondent submits that the arguments advanced by the counsel for appellants has to be rejected on the ground that coconut oil is either manufactured and sold in a brand name or not, it has to be used only as coconut oil and there is a difference between hair oil and coconut oil. Whenever hair oil is sold by a manufacturer, in addition to the coconut oil some other ingredients would also be there. In such circumstances it can be treated as an ordinary coconut oil in the ordinary sense. Therefore, the distinction between the hair oil and the coconut oil has not been properly appreciated by the legislature for bringing any amendment. Therefore, he requests the court to dismiss the appeal.

5. In order to ascertain the actual contends of the coconut oil sold in a brand name either in a plastic sachet or in a bottle and in order to find out whether it is a toilet article or an ordinary coconut oil as an edible oil, the learned Counsel appearing for the parties have produced two varieties of coconut oil, one sold under the brand name, Parachute and another KLF Nirmal Coconut oil. The Government Advocate by looking into the sachet, KLF Nirmal coconut oil, she contends that it is treated as an edible oil and it would attract 4% tax. But so far as the brand name, Coconut oil under the brand name, Parachute, she contends that it is used only as hair oil and cannot be treated as edible oil and therefore the tax has to be levied as toilet articles and not as edible oil.

6. But the learned Counsel for the assessee has produced two different kinds of Parachute bottles one says that, it is sold as hair oil and another as pure coconut oil. Considering these two bottles, he contends that as a dealer he deals not only with the Parachute coconut oil used for cooking purpose and another exclusively as hair oil. Therefore, he contends that the parachute coconut oil sold as hair oil may be treated as a toilet articles, but the parachute oil sold in bottles under the name of Parachute has to be treated as an ordinary coconut oil used for edible purpose. This distinction has not been noticed by the learned Judge.

7. Having seen the material produced before us and also considering that even a

coconut oil manufactured by a particular industry cannot be sold without a brand name, it would be difficult for us to accept the arguments advanced by the learned Government Advocate to say that any coconut oil sold under a brand name either in sachet or bottle has to be treated as a toilet article. We refuse to accept the arguments of the Government Advocate to treat the coconut oil sold in a brand name either in sachet or bottle as a toilet article. By looking into the ingredients of the coconut oil sold by two different companies, it is clear it is only a pure coconut oil and neither meant as edible oil nor as hair oil. But the bottle produced by the respondent-assessee of Parachute company has got two brand name one is sold as a pure coconut oil and another is a Coconut hair oil. The ingredients of the hair oil sold under the name of Parachute has got a different ingredients than the one manufactured and sold by the same Company as 100% pure coconut oil. Considering these aspects, we are of the opinion that the learned Judge has not taken into account distinction between the hair oil and edible oil. Since this aspect has not been considered, we are of the view the learned Judge has committed an error in granting a relief to the assessee in declaring the amendment as unconstitutional in violative of article 14 of the Constitution of India.

8. Considering the facts and background of the amendment brought in, we are of the view that whenever coconut oil is manufactured and sold as hair oil, the same would attract tax at higher rate of 15% and 20% as per the amendment brought to the Karnataka Sales Tax Act, in regard to coconut oil sold as pure coconut oil, as a brand name would attract only 4% as the same can be used as an edible oil not exclusively as a toilet articles. In view of this distinction, we allow this appeal.

9. Accordingly, the order of the learned Single Judge is set aside upholding the validity of the amendment by directing the appellant to consider the case of the assessee based on the distinction of selling the coconut oil as pure coconut oil and as hair oil.