(1967) 07 MAD CK 0024

In the Madras High Court

Case No : T.C. No. 48 of 1965 and W.P. No''s. 1826 and 1827 of 1964

The State of Madras APPELLANT

Vs

S.P. Vadivel Nadar and Sons RESPONDENT

Date of Decision : 18-07-1967

Acts Referred:

Citation : (1968) 21 STC 448

Hon'ble Judges : Veeraswami, J;ramaprasada rao, J

Bench : Division Bench

Advocate : The Special Government Pleader, for the Appellant; S.V. Subramanian, for Subbaraya Aiyar, Sethuraman, Padmanabhan and V. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The assessee is a dealer selling what is called ""Sarvaroga Sanjeevi Thailam"". For the two years preceding the assessment

year 1961-62, the revenue was of the view that this was a drug subject to multi-point tax. But in 1961-62 it changed its view and considered that

the commodity falls within the scope of item 51 of the First Schedule to the Madras General Sales Tax Act, 1959. The Tribunal did not agree with

that view with the result the revenue is before us in revision. Two writ petitions (W.P. Nos. 1826 and 1827 of 1964) are filed by the assessee to

forbid the assessing authority from reopening the assessments for the earlier years on the changed view of the revenue as to the character of the

commodity.

2. The question has been decided with reference to a pamphlet in the nature of an advertisement relating to the commodity. As stated, it is

described as ""Sarvaroga Sanjeevi Thailam"". The article does appear to have perfume and gives out an agreeable odour. Apart from this there is

nothing in the pamphlet to show that the article falls within item 51 which is :

Scents and perfumes, powders, snows, scented hair-oils, scented sticks, cosmetics and toilet requisites, except soaps.

3. The pamphlet says that the thailam has been prepared out of certain medicinal drugs, herbs, roots and barks and is recommended as a good

cure for skin diseases. Its application throughout the body followed by a cold or hot water bath, according'' to the pamphlet, not only cools the

human system but also the brain and eyes and helps to lend beauty. The thailam is said to be good particularly for certain types of skin diseases

and itches. The assessee has obtained a permit under the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. It also appears

that for the purpose of the Trade Marks Act, the thailam has been classified as a drug. A bottle of thailam , which is sizable, is moderately priced.

Having regard to these features, we feel satisfied that the article does not fall within the ambit of item 51. The item mentions various articles each of

which is intended to beautify the body or the face. There is nothing in the item which will cover medicinal preparations as the thailam in question.

There has been citation before us for the revenue which in our view is not of much assistance, for, the question has to be decided in the light of the

nature and property of each article. Plastic Products Ltd. v. Commissioner of Sales Tax, U.P., Lucknow [1967] 19 S.T.C. 480 has held that a

plastic safety-razor is not a ""cosmetic"" or a ""toilet requisite"" within the meaning of item 6 of the notification issued by the U.P. Government u/s 3-A

of the U.P. Sales Tax Act, 1948. Item 6 in the notification there related to ""cosmetics and toilet requisites"". The learned Judges referred to

Webster''s Third New International Dictionary for the meaning of the words ""toilet"" and ""cosmetic"" and concluded that though wide meaning was

attached to each of those words, nevertheless, the words ""toilet requisites"" should be read ejusdem generis with the word ""cosmetics"" and so done,

it was clear to the Court that plastic safety-razor was neither a cosmetic nor a toilet requisite. Cosmetic and toilet are used in the context of

beautifying the body and subject to that primary sense, several shades in the sense of each of those words are included in them. It is obvious that a

drug intended to cure diseases is not within their ambit. Deputy Commissioner v.

Jos Zachariah [1965] 16 S.T.C. 799 was concerned with the

question whether a ""comb"" was a ""toilet requisite"" and the opinion of the Kerala High Court is that it is not. The entry in question in that case is

similar to item 51 with which we arc concerned. In Mettur Sandalwood Oil Co. v. The State of Madras [1965] 16 S.T.C. 9 sandalwood oil was

held to be not within the ambit of item 51 of the First Schedule to the Madras General Sales Tax Act, 1959, notwithstanding the fact that the oil is

a scent and used for dressing the hair. The Court thought that it is not perfume, as sandalwood oil is sold as a base for preparing perfumes.

Commissioner of Sales Tax v. Sadhna Aushadhalaya [1963] 14 S.T.C. 813 was concerned with what was called ""Maha Bhringraj Hair-oil."" The

High Court of Madhya Pradesh held that it was a toilet article within entry 11 of Schedule I, Part I, of the C. P. and Berar Sales Tax Act, 1947.

4. The facts in this case do not admit of any doubt as to the character of the article ""Sarvaroga Sanjeevi Thailam"". The Tribunal''s opinion is that it

is primarily a drug which may be used mainly as a cure to the skin diseases and merely because its application may incidentally lend beauty will not

alter the true character of the article. We are inclined to accept this view. Having regard to the composition of the article and the advertised use for

which it is intended, namely, as a medicinal preparation and a cure for skin diseases, we are of opinion that it does not fall within the description of

any one of the articles in item 51 of the First Schedule. ''

5. The tax case is dismissed and the writ petitions are allowed. No costs.

