(1981) 10 MAD CK 0030

In the Madras High Court

Case No : Tax Case (Revision) No. 1002 of 1977

The State of Tamil Nadu APPELLANT

Vs

Gopal Nair and Sons RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:

Citation : (1982) 51 STC 257

Hon'ble Judges : Sethuraman, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; N. Inbarajan, for C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Respondent

Judgement

Sethuraman, J.—In this revision, the only point for consideration is whether the shaving cream sold by the assessee falls within entry 37 of

the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, for the assessment year 1972-73. The cream that is sold by the assessee is

manufactured by M/s. Hindustan Lever Ltd. Entry 37 of the First Schedule as in force in the relevant year runs as follows :

All kinds of soaps (excluding hand-made soaps), soap flakes, soap powders, detergent powders and liquids and metal polishing bars.

2. The Tribunal has taken the view that it did fall within the scope of entry 37. At the relevant time, there was another entry, numbered 51, running

as follows :

Scents and perfumes, powders, snows (including all purpose creams and cold and vanishing creams) and scented hair oils.

3. While, if the article fell within entry 37, the tax payable was 5 1/2 per cent at the point of first sale in the State. If it fell within item 51, the tax

was 12 per cent at the point of first sale. The cream under consideration did not also fall within entry 51. Now item 51-B has been introduced by

Tamil Nadu Act 7 of 1977 and the entry runs as follows :

Shaving sets (with or without contents), razors, safety-razors, razor-blades, shaving-brushes and shaving creams.

4. The sales are taxable at 8 per cent at the point of first sale in the state. Thus, shaving creams have been brought within the scope of the First

Schedule only in the year 1977. The cream cannot be classified as soap as if it did so entry 51-B would not have been introduced so as to include

shaving cream. Thus, even the legislative intention appears to be to treat shaving creams differently from soap and that is how shaving creams have

been specifically brought into the ambit of the First Schedule to entry 51-B. The question as to whether a particular article or commodity falls

within the scope of a particular expression used in the Sales Tax Act has to be determined with its nomenclature in commercial parlance. In

commercial parlance, if a person goes and asks for soap, he would not be given shaving cream. The cream under consideration is commercially a

different commodity. It, therefore, follows that the Tribunal, in so far as it held that the shaving creams fell within the scope of entry 37, is clearly

wrong, and therefore, the article could only be treated as coming within the multi-point levy.

5. The learned counsel drew our attention to the decision in State of Gujarat Vs. Prakash Trading Co., Ahmedabad, . In the case, the question

was whether shampoo fell within the category of soap. The Supreme Court pointed out that shampoo is a kind of liquid soap and has all the

essential ingredients of a soap. Shampoo is different from a shaving cream and we do not consider that a shaving cream can be considered to be

either liquid or any category of soap. The collocation of the expression in the entry considered by the Supreme Court was also different. In these

circumstances, we do not think it possible to apply the decision of the Supreme Court to the facts of the present case. The result is, the revision

petition succeeds. In the circumstances, there will be no order as to costs.

6. Petition allowed.