(1963) 07 MAD CK 0056

In the Madras High Court

Case No : T.C. No. 227 of 1962 (Revision No. 88 of 1962)

V.P. Somasundara Mudaliar APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 12-07-1963

Acts Referred:

Citation : (1964) ILR (Mad) 209 : (1963) 76 LW 698 : (1963) 14 STC 943

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastri, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—This revision is filed against the order of the Tribunal directing the petitioner to pay sales tax at six per cent, in respect of his turnover relating to tooth-powder manufactured and sold by him on the ground that it would come under the items enumerated in item 51 of the First Schedule to Act I of 1959. The assessee, V.P. Somasundara Mudaliar is a manufacturer and dealer in tooth-powder and rintan. For the assessment year 1959-60 he submitted a return showing a total turnover of Rs. 70,978 and a taxable turnover of Rs. 62,499-37. The Deputy Commercial Tax Officer, Peddunaickenpet, (North) Division, rejected his accounts as incorrect and incomplete and determined the taxable turnover to the best of his judgment at Rs. 76,696. He levied six per cent, tax on the goods holding that both tooth-powder and rintan are goods coming within the scope of item 51 of the First Schedule to the Act.

2. Against this order the assessee preferred an appeal to the Appellate Assistant Commissioner of Commercial Taxes, Madras II, contending that tooth-powder could not come under the class of goods specified in item 51 of the First Schedule and that it is liable to be taxed only at the rate of two per cent. He succeeded in getting the tax reduced from six per cent, to two per cent, with regard to rintan, but failed to convince the appellate officer that tooth-powder

will not come within the articles mentioned in item 51.

3. Aggrieved against this order, he filed an appeal to the Sales Tax Appellate Tribunal, once again contending that tooth-powder is not a toilet requisite and that it cannot come under the articles specified in item 51. The Tribunal did not agree with this contention, but came to the conclusion that the tooth-powder sold by the petitioner would fit in with the description of the articles set out in item 51 of the First Schedule and accordingly dismissed the appeal.

4. It is against this order of the Tribunal that the assessee has preferred this revision petition. The only point that arises for our consideration is whether tooth-powder can be called a "toilet requisite" and whether it would come under anyone of the items mentioned in item 51 of the First Schedule.

5. Item 51 of the First Schedule to Act I of 1959 is as follows :

6. In Encyclopaedia of Chemical Technology, New York, Vol. 4, it is stated in pages 928 to 930 :

A dentifrice is defined as a cleansing agent in the form of a powder, paste or liquid to be used on the teeth....Modern dentifrices are an extension of the numerous abrasive and cleansing substances used as dentifrices in the early part of 20th century....Although dentifrices have been considered dental cosmetics at first the emphasis of advertising and the awakening of the hygiene consciousness occasioned by the rising standard of living caused dental cleansing to be regarded as an indispensable daily hygiene, rather than an elective enhancement of beauty....The primary purpose of a dentifrice is the mechanical cleansing of the teeth....Although manufacturers of dentifrices have advanced such claims in their behalf as ability to prevent dental caries (decay) and treatment of pyorrhoea, the inexorable fact remains that dentifrices may be expected to perform only the principal function, the cleansing of the teeth, which includes the prevention of accumulation of layers of mucous plaques that gives them an appearance of yellowness. Dentifrices are not functionally antiseptics, but in cleansing teeth they serve as detergents for teeth and mucous membranes of the mouth since water is usually used to dispose of the dentifrice after brushing....

7. Similarly in the Book of Popular Science, Vol. 5, it is stated in page 133 that "a dentifrice may aid the brush to clean the teeth effectively...." It is therefore clear that tooth-powder is mostly used for cleaning the teeth and not for enhancing the beauty of a person. It cannot be treated as a cosmetic in the general sense designed to make up the beauty of a person. It cannot come under the class of articles intended to be rubbed, poured, sprinkled or sprayed or introduced into or otherwise applied to the human body for cleansing, beautifying, prompting attractiveness or appearance. Further we have also to see whether tooth-powder can be included in the category of goods such as "powders, cosmetics or toilet requisites" mentioned in item 51 of the First Schedule ; in other words, whether, by applying the familiar rule of ejusdem generis, tooth-powder can be included in the same kind of goods enumerated in item 51 of the First Schedule. In T. C. No.

187 of 1962 Since reported as Deputy Commissioner of Commercial Taxes, Madras Division, Madras 7 v. Ambika Stores [1963] 14 S.T.C. 688., we had occasion to explain elaborately the principle of ejusdem generis when dealing with the question whether "hairpins" can be considered to be "toilet requisites" falling under item 51 of the First Schedule. After referring to the relevant case-law, we came to the conclusion that hairpins cannot be called "toilet requisites". Following the same principle, we are of opinion that tooth-powder cannot be treated as goods of the same category as are mentioned in item 51 of the First Schedule. No doubt the Tribunal referred to various cases, namely, Sandu Bros. v. State of Madhya Pradesh [1953] 4 S.T.C. 397, Roopkala Industries v. State of Bombay [1956] 7 S.T.C. 557 and Mahajan and Co. v. State of Bombay [1958] 9 S.T.C. 133, where the questions, whether hair oil, talcum powders and "Badshahi soap" and "Badshahi powder" respectively could be held to be cosmetics or toilet articles, came up for consideration. In our opinion, these cases will not help us in deciding the question whether tooth-powder would come under the goods mentioned in item 51 of the First Schedule. As stated already, tooth-powder is only used for rubbing or cleaning the teeth and not for beautifying or enhancing the appearance. Such cleansing of the teeth should be regarded as an indispensable daily hygiene intended to protect the teeth and preserve them in good condition. We are therefore of opinion that tooth-powder cannot be included in the goods enumerated in item 51 of the First Schedule.

8. We accordingly allow the revision with costs, Advocate''s fee Rs. 100.