

M/s. Sarin Chemical Laboratory

Vs

Commissioner of Sales Tax, U. P.

Civil Appeals Nos. 262 - 265 of 1970

(J. C. Shah, K. S. Hegde JJ)

07.08.1970

JUDGMENT

HEGDE, J. -

1. These are connected appeals by special leave. The only question raised in these appeals is whether 'Sarin Tooth Powder' manufactured by M/s. Sarin Chemicals Laboratory is "cosmetic" or a "toilet requisite" as held by the High Court of Allahabad or it is an unspecified commodity liable to sales tax at all points of sale as held by the Additional Judge (Revisions) Sales Tax, Agra.
2. The contention of M/s. Sarin Chemical Laboratory who is the appellant in all the appeals is that the turn-over relating to the sales of tooth powder is liable to be taxed at the rate of 3 pies per rupee under Section 3 of the U.P. Sales Tax Act (to be hereinafter referred to as the Act) whereas Commissioner of Sales Tax, U.P. contends that the said turn-over is liable to be taxed at single point under Section 3(A) of that Act, read with Entry 6 of the notification No. 905/X, dated March 31, 1956. The High Court has accepted the contention of the Commissioner. In these appeals the assessee challenge the conclusion reached by the High Court and supports the view taken by the Additional Judge (Revision) Sales Tax, Agra, who held that the tooth powder is an unspecified commodity liable to tax under Section 3 of the Act.
3. Neither the expression 'cosmetic' nor 'toilet requisite' has been defined in the Act. The dictionary meaning of the expression 'cosmetic' (see Webster's international Dictionary) is "A preparation to beautify or alter appearance of the body or for cleansing, colouring, conditioning or protecting skin, hair, nails, eyes or teeth." The same dictionary gives the meaning of the expression "toilet" thus : 'an act or process of dressing, especially formerly of dressing hair and now usually cleansing and grooming of one's person'. The word "toiletry" is explained in the said dictionary as meaning "an article or preparation used in making one's toilet such as soap, lotion, cosmetic, tooth paste, shaving cream, cologne etc."
4. According to the dictionary meaning tooth powder is regarded both as an item of cosmetic and toilet but as observed by this Court in Ramamvatar Budhaiprasad v. The Asstt. Sales Tax Officer, Akola and Another, (12 STC 286) the names of articles, the sales and purchases of which are liable to be taxed given in a statute unless defined in the statute must be construed not in a technical sense but as understood in common parlance. Therein this Court was called upon to consider whether 'betel leaves' could be considered as 'vegetable' under item No. 6 of Schedule II of the C.P. Berar Sales Tax Act, 1947. In that case this Court observed that the word 'vegetable' had not been defined in the Act and being a word of every day use, it must be construed in a popular sense meaning "that sense which people conversant with the subject-matter with which statute is dealing would attribute

to it." Applying that test this Court ruled that beetle leaves cannot be considered as 'vegetable'. In common parlance a tooth powder is considered as a toilet. That meaning accords with the dictionary meaning as well.

5. The question whether tooth powder can be considered as a toilet came up before the Madras High Court in V. P Sanasundara Mudaliar v. State of Madras (14 STC 943) and before the Bombay High Court in Commissioner of sales Tax v. Vicco Laboratories. (22 STC 169) Both the courts took the view that the tooth powder is a toilet. The same view has been taken by Allahabad High Court. We are in agreement with that view.

6. In the result these appeals fail and they are dismissed with costs - hearing fee one set.

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