

State of Gujarat

Vs

Prakash Trading Co., Ahmedabad

Civil Appeal No. 37 of 1969

(H. R. Khanna, K. S. Hedge, P. Jagmohan Reddy JJ)

22.08.1972

JUDGMENT

KHANNA, J. -

1. This appeal by special leave is directed against the judgment of Gujarat High Court in a reference made to it under Section 61 of the Bombay Sales Tax Act, 1959 (Bombay Act 51 of 1959) as amended by the Bombay Sales Tax (Gujarat Amendment) Act, 1962 (Gujarat Act 25 of 1962) hereinafter referred to as the Act).

2. The respondent made an application under Section 52 of the Act to the Deputy Commissioner of Sales Tax for determination of the rate of tax payable on sale of five articles, including Palmolive Shampoo, large size, Colgate tooth paste, giant size and Colgate tooth brush for adult use. It was urged by the respondent before the Deputy Commissioner that Palmolive Shampoo was a kind of liquid soap and was covered by Entry 28 of Schedule C to the Act. As regards Colgate dental paste and Colgate tooth brush, the respondent submitted that those were articles meant for cleaning teeth and were not toilet articles. These contentions were repelled by the Deputy Commissioner, who held that the aforesaid three articles were toilet articles within the meaning of Entry 21-A of Schedule E to the Act and liable to tax accordingly. The Gujarat Sales Tax Tribunal on appeal took the same view as had been taken by the Deputy Commissioner. On application filed by the respondent, the following two questions were referred by the Tribunal to the High Court :

"1. Whether on the facts and in the circumstances of the case Palmolive Shampoo (large size) sold under Bill No. 505, dated July 15, 1964, is a toilet article within the meaning of Entry 21-A of Schedule B or is soap within the meaning of Entry 28 of Schedule C or is covered by Entry 22 of Schedule E to the Bombay Sales Tax Act, 1959 and liable to tax accordingly.

2. Whether on the facts and in the circumstances of the case : (1) Colgate Tooth Paste and (2) Colgate Tooth Brush sold under Bill No. 505, dated July 15, 1964, are toilet articles within the meaning of Entry 21-A of Schedule E or are covered by Entry 22 of Schedule E to the Bombay Sales Tax Act, 1959 and liable to tax accordingly."

The answer of the High Court on the first question was that Palmolive Shampoo was not a toilet article within the meaning of Entry 21-A of Schedule E to the Act but was soap within the meaning of Entry 28 of Schedule C and was liable to be taxed accordingly. As regards question No. 2, the answer of the High Court was that Colgate tooth brush and Colgate tooth paste were not toilet articles in Entry 21-A of Schedule E but were covered by the residuary Entry 22 of Schedule E and

were liable to be taxed accordingly.

3. In an appeal in this Court Mr. Bhandare on behalf of the appellant has argued that all the three articles in question, namely, Palmolive Shampoo, Colgate tooth paste and Colgate tooth brush are toilet articles as mentioned in Entry 21-A of Schedule E to the Act. As against that Mr. Chagla on behalf of the respondent has canvassed for the correctness of the view of the High Court.

4. We may at this stage refer to the three entries with which we are concerned. Entry 28 of Schedule C to the Act pertains to soap. Entry 21-A of Schedule E to the Act deals with the following goods :

"21-A. Toilet articles including hair cream and hair tonic; and perfumes, depilatories and cosmetics (except soap as specified in Entry 28 in Schedule C and hair oil as specified in Entry 7 of this Schedule)."

Entry 22 is a residuary entry and relates to "all goods other than those specified from time to time in Schedules A, B, C and D and in the preceding entries".

5. So far as Colgate tooth paste is concerned, we find that the matter is concluded by a decision of this Court in the case of Sarin Chemical Laboratory v. Commissioner of Sales Tax, U.P. ((1970) 26 STC 339 : (1970) 2 SCC 403 : (1971) 1 SCR 731.) It was held in that case that tooth powder is a toilet requisite and was liable to Sales tax as such. Reference in this connection was made to the Dictionary meaning of the words "cosmetic", "toilet" and "toiletry". "Cosmetic", according to Webster's International Dictionary, is "a preparation to beautify or alter appearance of the body or for cleansing, colouring, conditioning or protecting skin, hair, nail, eyes or teeth". The same dictionary gives the meaning of the expression "toilet" as "an act or process of dressing, especially formerly of dressing hair and now usually cleaning and grooming of one's person". "Toiletry", according to the dictionary, is "an article or preparation used in making one's toilet such a soap, lotion, cosmetic, tooth paste shaving cream, cologne, etc." It was further observed by this Court that according to the dictionary meaning, tooth powder was regarded both as an item of cosmetic and toilet and that in common parlance, tooth powder was considered to be an article of toilet. As such, the Court came to the conclusion that tooth powder was a toilet requisite. The reasoning given by this Court in respect of tooth powder in the above cited case, in our opinion, holds, equally good for tooth paste. Likewise, the dictionary meaning of the word "toilet" relied upon in the above case "as an act or process of cleaning of one's person" shows that a tooth brush which is meant for cleaning one's tooth is a toilet article.

6. Mr. Chagla has tried to distinguish the case of Sarin Chemical Laboratory (supra) on the ground that that was a case under the U.P. Sales Tax Act while we are dealing with a case under the Bombay Sales Tax Act. This submission is clearly untenable, because we are concerned with the concept of a toilet article as understood in common parlance. Neither the Bombay Sales Tax Act nor the U.P. Sales Tax Act contained any special definition of the toilet articles and, as such, the reasoning in the case of Sarin Chemical Laboratory (Supra) cannot be held to relate only to cases under the U.P. Sales Tax Act. Apart from that, we find that in the case of Sarin Chemical Laboratory (supra) this Court approved of the decision of the Bombay High Court in Commissioner of Sales Tax v. Vicco Laboratories ((1968) 22 STC 169.). In the last mentioned case it was held by the Bombay High Court that Vicco Vajradanti dentifrice in the form of a powder used for cleaning teeth was a toilet article. It would, therefore, follow that this Court has not its seal of approval on the view that for the Bombay Sales Tax Act also, dental powder used for cleaning of teeth is a toilet article. We are also unable to accede to the submission of Mr. Chagla that as teeth can also be cleansed

without the use of tooth brush, the same is not a toilet article. The question with which we are concerned is not whether the use of tooth brush can be dispensed with, but whether it is actually used for the purpose of cleansing one's teeth. If the tooth brush is, in fact, used for cleaning one's teeth, the same must be held to be an article of toilet.

7. The view taken by the High Court regarding shampoo that it constitutes soap, in our opinion, is well-founded. The High Court in this respect has referred to the following passage in the Encyclopedia of Chemical Technology :

"..... The soaps used for shampooing the hair are essentially the same as those describe under "soap". See Cosmetics Vol. 6., p. 550, soap. They are available in several forms; bar, cake, liquid, powder (or granules) and jelly. Although there will undoubtedly always be number of individuals who will wash their hair with any cake of soap that may be at hand, the prepared liquid shampoos have rapidly risen to first place in the retail trade. The bars and cakes are shaved down, the granules are dissolved and the jellies are diluted, to prepare liquid shampoo of the desired concentration....."

The High Court concluded from the above that Palmolive Shampoo was soap covered by Entry 28 of Schedule C to the Act. We agree with the High Court in this respect and are of the opinion that shampoo is a kind of liquid soap. It has all the essential ingredients of a soap. It may be that the proportion of the ingredients of the liquid soap differ from those of a soap in the form of a cake but that fact would not alter the basic character of shampoo and take it out of the category of soaps.

8. As a result of the above, we partly accept the appeal and set aside the judgment of the High Court insofar as it relates to tooth paste and tooth brush. Both of them, in our opinion, are toilet articles within the meaning of Entry 21-A of Schedule E to the Act. We, however, uphold the judgment of the High Court insofar as the High Court has held that shampoo is soap within the meaning of Entry 28 of Schedule C to the Act. In view of the partial success of each party, we leave the parties to bear their own costs of this Court as well as in the High Court.

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