SUPREME COURT OF INDIA

Commissioner of Sales Tax U.P.

Vs.

S. N. Brothers, Kanpur

C.A.No.2088 of 1969

(P. Jaganmohan Reddy and I. D. Dua, JJ.)

02.11.1972

JUDGEMENT

DUA, J.:-

1. This appeal by the Commissioner of Sales Tax, Uttar Pradesh is by special leave and is directed against the judgment of the Allahabad High Court answering the following question in the negative in favour of the respondent (hereinafter called the dealer) and against the Commissioner of Sales Tax, appellant :

"Whether the food colour and essence are under the circumstances items to be taxed under Section 3A within the notification no. ST-905/X dated March 31, 1956?"

2. The dealer carries on the business, inter alia, of selling food colours and syrup essences. The dealer also carries on the business of petroleum jelly but we are not concerned withs that item in this

appeal : nor are we concerned with the sales of imported scents and perfumes which, according to the order of the Sales Tax Officer, were separately shown in the statement filed by the dealer, during the assessment proceedings for the year 1960-61. For the said year the Sales Tax Officer taxed food colours and 'syrup essences imported by the dealer from outside Uttar Pradesh under S. 3A of U. P. Sales Tax Act, 15 of 1948 (hereinafter called the Act) treating them as imported colours and perfumes. The figures of the dealer's trading account were accepted by the Sales Tax Officer. The dealer, according to whom, food colours and syrup essence being unclassified goods were taxable under S. 3 and not under Section 3A of the Act, unsuccessfully appealed against the order of the Sales Tax Officer to the Assistant Commissioner (Judicial); II Sales Tax, Kanpur. Further revision to the Court of the Judge (Revisions) Sales Tax, Lucknow, also failed. It may, however, be pointed out that for the assessment year 1957-58 the Appellate Authority had, in disagreement with the assessing officer, held food colours and essences of syrup to be unclassified items and had granted the relief claimed by the dealer. Against that decision of the Appellate Authority the Department preferred a revision to the Court of the Judge (Revisions), Sales Tax. Both these revisions, by the Department with respect to the assessment year 1957-58 and by the dealer with respect to the assessment year 1960-61 were heard together and disposed of by the common order dated November 19, 1965. The dealer's application for reference was, however, allowed and the learned Judge (Revisions), Sales Tax referred for determination of the Allahabad High Court the question reproduced in the beginning of this judgment. The High Court agreed with the dealer's contention and held food colours and syrup essences not to fall within the entries at items nos. 10 and 37 of the Notification under S. 3A of the Act. The reference was accordingly answered in the negative and against the Department. The only question which now falls for determination is the one referred to the High Court and which has already been reproduced. There is no dispute about the turnover. The dealer claims that on imported food colours and syrup essences the rate of tax should be 2 nP per rupee as unclassified goods under S. 3, whereas according to the Commissioner the tax should be 6 nP per rupee under S. 3A of the Act. Section 3 provides for liability to tax under the Act whereas Section 3A, which was inserted by U.P. Act 25 of 1948 and has thereafter been amended from time to time, deals with single point taxation. Section 3A reads:

"3-A. Single point taxation : (1) Notwithstanding anything contained in Section 3, the State Government may, by notification in the official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify.

(2) If the State Government makes a declaration under sub-section (1), it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding ten naya paise per rupee as may be specified.

(3) Every notification made under this section shall be laid before the Legislative Assembly of the State as soon as may be after it is made and if a resolution amending or modifying it is passed by the Assembly within the session in which it is laid, it shall, from the date of passing of the resolution, be amended or modified accordingly but without prejudice to the validity of anything previously done or of any liability incurred or assessment made."

On March 31, 1956 the Governor of Uttar Pradesh issued a notification in exercise of the powers conferred by S. 3A of the Act. That notification so far as relevant for our purpose reads :

"Notification No. ST-905/X dated 31st March, 1956. In exercise of the powers conferred by Section 3A of the U. P. Sales Tax Act, 1948 as amended from time to time and the supersession of all previous Notifications on the subject, the Governor of Uttar Pradesh is hereby pleased to declare that the turnover in respect of the goods specified in the list below shall not with effect from April 1, 1956, be liable to tax except - (a) in the case of goods imported from outside Uttar Pradesh at the point of sale by the importer; and

(b) in the case of goods manufactured in Uttar Pradesh at the point of sale by the manufacturer;

and the Governor is further pleased to declare that such turnover shall with effect from the said date be taxed at the rate of of one anna per rupee.

LIST

....

10. Dyes and colours and compositions thereof.

xx xx xx xx xx xx

37. Scents and perfumes.

...."

3. The narrow point requiring decision is whether food colours and syrup essences imported by the dealer from outside U.P. fall within the entries 10 and 37 respectively. If they do, then the appeal of the Department has to succeed and if they do not then the appeal must fail. As noticed earlier the High Court has in the impugned judgment, in disagreement with the view taken by the Sales Tax Officer, the Assistant Commissioner (Judicial) and the Judge (Revisions), Sales Tax, held that the food colours and essences do not fall in the entries at items 10 and 37 of the Notification. This is

how the High Court has dealt with the point in controversy:

"The notification with which we are concerned in the instant case is notification no. ST-905/X dated March 31, 1956. Item nos. 10 and 37 of that notification read as follows :

'10. Dyes and colours and composition thereof.

37. Scents and perfumes."

The case of Commissioner of Sales Tax is that food colours would fall under item no. 10 i.e., 'dyes and colours and composition thereof' and essence would fall in the entry given in item no. 37 i.e., 'scents and perfumes'. Food colours are edible articles. The expression 'dyes and colours and composition thereof' does not relate to item of food but only to colouring and dyeing material i.e., material for colour washing or colour painting or dyeing of fabrics. In our opinion, it stands in contradistinction to bleaching material. Similarly, the entry at item no. 37 relates to articles which cater to the smelling sense i.e., those which appeal to nose. Essence is a flavouring material and its function is to add flavour to the food i.e., to make it more palatable. It appeals to the tongue or to the palate. By scents and perfumes is meant articles or perfumery. In our opinion, therefore, the food colours and essences would not fall in the entries at items nos. 10 and 37 of the notification aforesaid. In our opinion they could not be taxed under Section 3A but under Section 3 of the Act."

4. Shri Manchanda, learned counsel for the appellant, assailed the reasoning and approach of the High Court. According to him the words "dyes and colours" in entry no. 10 of the List in the Notification in question and the words "scents and perfumes" in entry no. 37 of the said List are unqualified and there being no limitation discernible on their plain and general meaning, they must be held to be wide enough to cover 'food colours' and 'syrup essences'. In seeking support for this submission reference was made to the Random House Dictionary of the English Language (prepared in U.S.A.) for ascertaining the meaning of the words "colour" (colour, as spelt in this dictionary), "dye" and "essence", as alsods to Encyclopaedia Brittanica Vols. 8 and 17 and Corpus Juris Secundum, Vols. 28 and 70 for the same purpose. Strong reliance was placed on the decision of this Court in Commr. of Sales Tax U. P. v. Indian Herbs Research and Supply Co. (1970) 25 STC 151 (SC) in which the word "perfume" was held to include "dhoop" and "dhoop batti". The word "perfume", it may be recalled occurs in the entry no. 37 of the List in the Notification in question.

5. In our opinion the Random House Dictionary cannot serve as a safe guide in construing the words used in the List in the Notification in question for the purpose of deciding whether or not the words used in entries nos. 10 and 37 cover food colours and syrup essences: indeed this Dictionary is apt to be a somewhat delusive guide in understanding the meaning of the words and expressions with

which we are concerned in the context in which they are used. This Dictionary gives all the different shades of meanings attributable to the words referred but that is hardly helpful in solving the problem raised in the present controversy. The words "dyes and colours" used in entry no. 10 and the words "scents and perfumes" used in entry no. 37 have to be construed in their own context and in the sense, as ordinarily understood and attributed to these words by people usually conversant with and dealing in such goods. Similarly the words "food colours" and "syrup essences" which are descriptive of the class of goods the sales of which are to be taxed under the Act have to be construed in the sense in which they are popularly understood by those who deal in them and who purchase and use them. The respondent's learned counsel has in support of this view referred us to some decided cases. In Kishan Chand Chellaram v. Joint Commercial Tax Officer. Chintradripet, (1968) 21 STC 367 (Mad) a Bench of the Madras High Court held that Terylene, Terene, Decorn, Nylex etc., came within the expression "artificial silk" occurring at item no. 4 in the Third Schedule to the Madras General Sales Tax Act, 1959. In the course of the judgment in that case it was observed that the import and content of those words have not been defined in the Sales Tax Acts and the Courts are bound to have recourse to the meaning attributable to such words by persons who are dealing in and utilising such goods. The extreme, peculiar and scientific meaning of the goods which might sometimes deviate from the popular meaning, cannot prevail. The meaning which the trade, Government officials and statutes attribute to the words "artificial silk" was considered by the High Court to be the ordinary and popular meaning of that expression. In Sarin Chemical Laboratory v. Commr. of Sales Tax, (1970) 26 STC 339 = (AIR 1971 SC 65) this Court held tooth powder to be a "toilet requsite" and liable to sales tax at a single point under S. 3A of the Act read with entry no. 6 of the notification, with which we are also concerned in the present case, it being observed that the names of the articles, 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. In this decision reference was made to an earlier decision of this Court by five Judges in Ramvatar Budhiprasad v. Assistant Sales Tax Officer Akola, (1961) 12 STC 286 = (AIR 1961 SC 1325) in which "betel leaves" were not considered as "vegetable". In Commr. of Sales Tax, M. P. Indore v. Jaswant Singh Charan Singh, (1967) 19 STC 469 = (AIR 1967 SC 1454) the word "coal" was held by this Court to include "charcoal", it being observed that, while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms, but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. In the course of the judgment, after referring to certain decisions, including the decisions from Australian, Canadian and English Courts, it was observed :

"The result emerging from these decisions is that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term 'coal'. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal, otherwise both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

It may be pointed out that the entry in the case cited read "coal including coke in all its forms". In Sales Tax Commissioner, U. P. v. Ladha Singh Mal Singh, (1971) 28 STC 325 = (AIR 1971 SC

2221) cloth manufactured by means of power-looms was held by this Court not to fall within the words "cloth manufactured by mills" in the Notification dated June 8, 1948, issued under S. 3A of the Act and the sale of such cloth was held not liable to be taxed at the higher rate of 6 Ps. in a rupee. According to this decision powerloom cloth in popular language is never associated with mill cloth. In view of these and some other decisions the learned counsel for the appellant, it may be said in fairness, did not dispute that the words with which we are concerned must be construed in the sense which is imputed to them by the persons who deal in and who consume such articles.

6. "Food colours" and "syrup essence" being themselves known articles of common use, the question arises whether the words and expressions used in entries 10 and 37 of the List are intended to take within their fold goods popularly known in common parlance by the names of "food colours" and "syrup essences".

7. It cannot be gainsaid that "food colours" and "syrup essences" are edible goods whereas "dyes and colours and compositions thereof" and "scents and perfumes" as specified in entries nos. 10 and 37 of the List do not seem prima facie to connote that they are edible goods. This is the reasoning of the High Court and it appears to us to be both logical and rational. Indeed, except for items like 'salt' in entry no. 34, the "sugar manufactured by mills" (entry no. 40) and "Banaspati, including refined coconut oil" (entry no. 43) which is capable of being used as medium for cooking is prima facie edible there does not seem to be any other edible article included in the List. Item no. 25 speaks of "oils of all kinds other than edible oils manufactured on Ghanis by human or animal power". This scheme suggests that, apart from the undoubted edible goods, in cases where the import of the specified goods is wide enough to include both edible and non-edible category then the intention has been clearly expressed whether or not to include edible goods. Now in the case of entries nos. 10 and 37 we are inclined to think in agreement with the High Court that these entries are not intended to extend to edible colours like food colours and to edible essence like syrup essences. It would indeed be straining the meanings of the words and expressions in those entries as understood in popular commercial sense to include edible colours and essence. If the intention of the State Government was to include food colours in entry No. 10 and syrup essences in entry no. 37 then in our view these goods could easily have been specified by their own popularly known description. In any event assuming that another view as to the meaning of these entries is possible we have not been persuaded to hold that the view taken by the High Court is so grossly erroneous that we should interfere on special leave appeal under Art. 136 of the Constitution.

8. Shri Manchanda made a passing reference to the Prevention of Food Adulteration Rules, 1955 framed under Ss. 4 and 23 of the Prevention of Food Adulteration Act, 37 of 1954 and pointed out that R. 23 postulates addition of colouring matter to an article of food when permitted. This, according to the argument, suggests that the word 'colour' as used in entry no. 10 of the list of the Notification in question has been used in a broad enough sense so as to take within its fold edible colour or food colour. We are not impressed by this argument. Rule 23 of the Prevention of Food Adulteration Rules indeed seems to go against the submission.

9. The appellant's learned counsel had at one stage suggested that the goods intended to be taxed under S. 3A of the Act are all luxury goods and therefore food colours and syrup essences which are normally used by comparatively richer class of society should be presumed to have been intended to be included in items nos. 10 and 37 of the List. On closer scrutiny of the List, however, this point was rightly not developed.

10. For the reasons foregoing this appeal fails and is dismissed with costs.

Appeal dismissed.