

BOMBAY HIGH COURT

Commissioner of Sales Tax

Vs

Vicco Laboratories

(N Abhyankar, C.J. Vimadalal, J.)

20.02.1968

JUDGMENT

N. Abhyankar, J.

1. This reference made at the instance of the Commissioner of Sales Tax concerns the following question referred to us by the Tribunal :-

"Whether on a true and proper interpretation of entry No. 39 of Schedule B to the Bombay Sales Tax Act, 1953, the Tribunal was correct in law in holding that Vicco Vajradanti (tooth-powder) sold by the respondents is not 'toilet article' falling under the said entry ?"

2. The respondents are manufacturers of a dentifrice in the form of a powder used for cleaning teeth. It sells in the trade name of Vicco Vajradanti. It does not seem to be disputed that such a powder is used for cleaning teeth. In respect of the turnover of sales of this powder the Sales Tax Officer classified this as falling in the residuary entry No. 80 in Schedule B of the 1953 Act and charged sales tax accordingly. It was confirmed in appeal at the instance of the respondents. The Deputy Commissioner of Sales Tax, however, in exercise of his revisional powers suo motu revised the order so far as the finding of the Sales Tax Officer about the correct entry in the Schedule being applicable to this powder was concerned. So far as the payment of the tax was concerned, the Deputy Commissioner came to the conclusion that this dental powder would more properly be included among toilet articles in entry No. 39 of Schedule B and ought to be charged at the rate specified in this entry.

3. Against this order, the respondents preferred a revision before the Tribunal contending that the dental powder was not a toilet article and this contention was accepted by the Tribunal and it restored the order of the Sales Tax Officer. The Tribunal has now referred the above question to us. In reversing the finding of the Deputy Commissioner, the Tribunal purported to follow a decision of the Madras High Court in *V. P. Somasundara Mudaliar v. The State of Madras*¹ in

which the Court has held that tooth-powder would not be included in entry 51 of the Madras Act, which entry was as follows :

"Scents and perfumes, powders, snows, scented hair-oils, scented sticks, cosmetics and toilet requisites, except soaps."

4. The Tribunal rejected the contention of the respondents that this was a medicinal preparation, but the Tribunal took the view that the idea of toilet is to render the outward personality of a person attractive and properly groomed up and for this purpose beautiful and sparkling teeth will no doubt be an added advantage. But the hygiene of the teeth is the most essential requirement for the health of every human being, whether conscious of his personality or not, whether desiring to impress people with his personality or not. Every person must use dentifrice in one form or the other to maintain hygiene of his teeth, and therefore it cannot be said that it is an aid for maintaining outward beauty of the personality. The Tribunal also referred to the notification of the Government under which certain articles were excluded from entry No. 39 such as agarbatties and udbatties, incense, oils for use in toilet except perfumed oils and combs other than those intended for being worn in the hair. Relying upon this notification the Tribunal applied the principle of ejusdem generis to come to a conclusion that tooth-powder will not answer the description of any of these excluded articles.

5. The view taken by the Tribunal is supported in this Court on behalf of the respondents more or less on the same line of reasoning. It is contended that toilet articles are principally concerned with a process of beautifying the exterior of a person, whereas the essential purpose of using a dentifrice or dental powder is hygienic and it cannot be said that in cleaning one's teeth by a tooth-powder or dentifrice anybody is attempting to add beauty to his face or his personality. It is an essential thing to be done by anybody who wants to live in good health, and, therefore, dental powder or dentifrice cannot be included in toilet articles.

6. We are unable to accept the interpretation of this entry put by the Tribunal as excluding dental powder. Webster's International Dictionary gives one of the meanings of "toilet" as act or process of dressing, especially formerly of dressing hair, and now usually cleansing and grooming of one's person. That dictionary also gives separately the meaning of the word "toiletry", and "toiletry" means an article or preparation used in making one's toilet such as soap, lotion, cosmetic, tooth-paste, shaving cream, cologne etc. When entry 39 in the Bombay Sales Tax Act, Schedule B, used the words "toilet articles" it would be more appropriate to construe the meaning of that entry both in its popular sense and in the sense in which it is understood generally. We fail to see how the process of cleaning one's teeth could be excluded from what is understood by "toilet" or "toiletry". If anything, that is the most essential thing to be done. If articles, such as oil or a brush used for cleansing and grooming other limbs of the body such as face or hands or feet

or other parts of the body, can well be included as toilet articles and are described as such, we fail to see why dentifrice or tooth-brush which is used for cleansing one's teeth is deliberately required to be excluded from the list of toilet articles.

7. On behalf of the department reliance was placed on a decision of this Court in *C. C. Mahajan & Co. v. The State of Bombay*² where the question was whether a depilatory used for the purpose of cleansing and grooming one's a person is a toilet article. Similarly, another question concerned Badshahi soap and Badshahi powder which were used as depilatory and whether they were, therefore, toilet articles. Referring to Webster's New International Dictionary which gives the meaning of "toilet" to be the same as we have reproduced above, the Court held that there can be little doubt that a depilatory is used for the purpose of cleansing and grooming one's person and, therefore, it is a toilet article. If an article used for grooming one part of the body is a toilet article, by no process of reasoning can an article like tooth-powder which is used for cleansing another part of the body, viz., teeth, can be said not to be a toilet article and outside entry No. 39. In a more recent judgment of the Allahabad High Court in *Plastic Products Ltd. v. Commissioner of Sales Tax* ([1967] 19 S.T.C. 480.), the question was whether a plastic safety-razor would be a toilet requisite. In considering the question at page 483 of the report, the Court referred to the definition of the word "toilet" and "toiletry" in Webster's Third New International Dictionary and "toiletry" there included preparation such as soap, lotion, cosmetic, tooth-paste, shaving cream, cologne etc. If tooth-paste is toiletry, we have no doubt that tooth-powder is equally so.

8. The test to be applied, in our opinion, would be whether an article or thing is used or is capable of being used for cleaning or grooming one's person. Which part of the anatomy is selected for cleaning or grooming is not relevant for consideration because it is the article used for a cleaning process which is intended to be included in the form or process of toileting. We have, therefore, no difficulty in holding that tooth-powder sold by the respondents is included in entry No. 39 of Schedule B as a toilet article. We, therefore, answer the question referred to us in the negative and hold that the Tribunal was not correct in law in holding that the Vicco Vajradanti sold by the respondents is not a toilet article.

9. The result is that the reference is answered in favour of the applicant. The respondents shall pay costs of the applicant. Costs fixed at Rs. 250.

10. Reference answered accordingly.

Cases Referred.

1([1963] 14 S.T.C. 943.)

2([1958] 9 S.T.C. 133)



