

Sarin Chemical Laboratory vs Commissioner Of Sales Tax, U.P on 7 August, 1970

**Equivalent citations: 1971 AIR 65, 1971 SCR (1) 731, AIR 1971 SUPREME
COURT 65**

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah

PETITIONER:
SARIN CHEMICAL LABORATORY

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, U.P.

DATE OF JUDGMENT:
07/08/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1971 AIR 65 1971 SCR (1) 731
1970 SCC (2) 403
CITATOR INFO :
E 1973 SC 78 (5)
F 1973 SC 960 (5,6)

ACT:
U.P. Sales-Tax Act U.P. Act of 1948 S. 3 and 3-A-Tooth
Powder-If liable to tax as toilet or as unspecified
commodity.

HEADNOTE:
On the question whether tooth powder manufactured by the
assessee was "cosmetic" or a "toilet requisite" liable to
tax under s. 3(A) of the U.P. Sales Tax Act, read with Entry
6 of Notification No. 905/X dated March 31, 1956/or whether
it is an unspecified commodity liable to tax under section 3
of the Act,

HELD :-Tooth powder is a toilet and therefore taxable under s. 3(A) of the U.P. Sales Tax Act, read with the Notification.

Neither the expression 'cosmetic, nor 'toilet requisite' has been defined under the Act. 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 a common parlance. In common parlance a tooth -powder is considered as a toilet and that meaning accords with the dictionary meaning as well. [732 E, H]

Bamavater Budhaiprasad v. The Asstt. Sales Tax Officer, Akola and Another, 12, S.T.C. 286, followed.

V. P. Sanasundara Mudaliar v. State of Madras 14, S.T.C. 943; Commissioner of Sales Tax v. Vicco Laboratories, 22 S.T.C. 169, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 262 to 265 of 1970.

Appeals by-special leave from the judgment and order dated May 1, 1969 of the Allahabad High Court in Sales Tax Reference Nos. 249, 250, 251 and 571 of 1966 and Civil Appeals Nos. 266 and 267 of 1970.

Appeals by special leave from the judgment and order dated January 29, 1969 of the Allahabad High Court in Sales Tax Reference Nos. 604 and 603 of 1965.

H. R. Gokhale, Gobind Das, D. N. Mishra and B. P. Singh, for the appellant (in all the appeals).

C. B. Agarwala and O. -P. Rana, for the respondent (in all the appeals).

The Judgment of the Court was delivered by Hegde, J. 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. 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 s. 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 s. 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 challenges the conclusion reached by the High Court and supports the view taken by the Additional Judge (Revisions) Sales Tax, Agra, who held that the tooth powder is an unspecified commodity liable to tax under s. 3 of the Act.

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, coloring, 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. According to the dictionary meaning tooth powder is regarded both as an item of cosmetic and toilet: but as observed by this Court in *Bamavatar Budhaiprasad v. The Asstt. Sales Tax Officer, Akola* and another(1), 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, (1) 12, S. T. C. 286;

it must be construed in a popular sense, meaning "that sense which people conversant with the, subject in matter with which statute is dealing would attribute to it." Applying that test this Court ruled that betel 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.

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*(') and before the Bombay High Court in *Commissioner of Sales Tax v. Vicco Laboratories*(2). Both the courts took the view that the tooth powder is a toilet. The same view has been taken by the Allahabad High Court. We are in agreement with that view In the result these appeals fail and they are dismissed with costs-hearing fee one set.

Y.P.

Appeals dismissed.

(1) 14. S. T. C. 943.

(2) 22. S. T. C. 169.