

Supreme Court of India

G. Radhakrishna Murthy And ... vs Commercial Tax Officer-Ivb, ... on 20 February, 1997

Equivalent citations: JT 1998 (4) SC 426, (1997) 8 SCC 37, 1999 113 STC 161 SC

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Bench: S Sen, S V Manohar

JUDGMENT Suhas C. Sen, J.

1. These are appeals from an order passed by the Andhra Pradesh High Court by which large number of writ petitions were disposed of. The common question involved in all those writ petitions was whether aggarbatti's were liable to sales tax under Item 36 of the First Schedule to the Andhra Pradesh General Sales Tax Act. The writ petitioners and the other dealers in aggarbattis were paying sales tax on aggarbattis as general goods taxable at the rate of 4% up to 8.7.1983 and 5% from 8.7.1983. Item 36 of the First Schedule of the Act was amended thereafter, and the amended entry at the material point of time which fell for consideration of the High Court was as under:

36. Cosmetics and toilet preparations including scents, perfumes, face powders, talcum powders, hair tonics, hair oils, face creams and snows, pomades, depilatories, tooth powder, toothpaste, toothbrushes and shaving creams.

2. It maybe noticed that the only change that was brought by the amendment was to include scents and perfumes within Entry 36. The Department's stand is that "perfumes" would include aggarbattis and this stand found favour with the High Court. The High Court mainly relied on the judgment of this Court in the case of CST v. Indian Herbs Research & Supply Company. (1970) 25 STC 151 (SC). In that case, this Court had to construe the word "perfume" falling under Item 376 of a notification issued under the Madhya Pradesh Sales Act which was as under:

37. Scents and perfumes (in English) and Itra tatha sugandhian (in Hindi).

3. This Court noted in that judgment that the Oxford Dictionary defined the word "perfume" as follows:

It is evident therefore, that the word "perfume", originates from the word "furmare" which means to "smoke" or to emit vapour given off by some burning substance. In Encyclopaedia Britannica, Volume 7, 1965 Edition, at page 505, it is similarly pointed out that the literal meaning of the word "incense" is the same as "perfume", but "perfume" has later on acquired an extended meaning so as to include anything sweet from smoking incense to fragrance of flowers. We are accordingly of the opinion, that the word "perfume" in Item No. 376 of the Government notification should be construed in its ordinary sense, i.e., any substance natural or prepared which emits or is capable of emitting an agreeable odour either when burned or by the application of some foreign matter to induce any chemical reaction which results in fragrant odours being released from that substance.

4. There are several reasons why the meaning assigned to "perfume" in that case cannot be straightaway applied to construe Item 36 of the First Schedule of Andhra Act. Unlike Entry 37 of the Madhya Pradesh Act which deals with "scents and perfumes", the entry in the Andhra Act is

"cosmetics and toilet preparations". Aggarbattis cannot be construed as either cosmetics or toilet preparations. Moreover, the meaning of this phrase has been clarified to include scents, perfumes, face powders, talcum powders, hair tonics etc. "Scents and perfumes" must be construed having regard, to the context of the other articles mentioned in Item 36. All the items mentioned in the inclusive definition are items of cosmetics or toiletry.

5. An inclusive definition has been given clarifying, that cosmetic and toilet preparations would include scents, perfumes, face powders, talcum powders, hair tonics, hair oils, hair lotions, face creams and snows, pomades, depilatories, tooth powder, toothpaste, toothbrushes and shaving creams. The things specially mentioned in the entry "cosmetic and toilet preparations" are all of the nature of personal application. Incense sticks or aggarbattis are goods of a different character altogether. These may emit a pleasant odour when burnt. That, however, will not bring aggarbattis within the class of articles mentioned in Item 36 of the First Schedule. All these goods are articles of personal application. "Perfume" in this context has to be construed ejusdem generis.

6. Furthermore, the meaning of the word "perfume" in modern times has undergone a change. The meaning given by Oxford Advanced Learner's Dictionary, Encyclopedic Edition, 1992 is as under:

Perfume. 1. fragrant or pleasant smell; the perfume of the flowers, flowery perfumes, 2. (any of several types of) sweet-smelling liquid, often made from flowers, used . especially on the body; sell perfumes and toilet waters, the French perfume. Perfume(1) (of flowers, etc.) give a fragrant smell to; the roses perfumed the room: (2) put perfume on; perfume a handkerchief.

The etymological meaning or the original meaning of "perfume" may have come from the word "fumare" (smoke). But in modern parlance its meaning is quite different.

7. Moreover, the main difficulty in the way of the respondents is the context in which the words "scents and perfumes" appear in Item 36 of the First Schedule. "Cosmetics and toilet preparations" are things that have to be taxed under Item 36. We are of the opinion that having regard to the articles included in Item 36 of the First Schedule under the heading "Cosmetics and toilet preparations", the meaning of "perfumes" cannot be expanded to include aggarbattis.

8. A similar approach was adopted by the Kerala High Court dealing with Entry 80 of the First Schedule of the Kerala General Sales Tax Act, 1963. The entry reads:

80. Talcum powder, other at the point of first sale in 10% perfumeries and cosmetics the State by a dealer who is not falling under any other liable to tax under Section 5". Item in this Schedule.

9. The question was whether aggarbatti could be taxed under this entry. The Division Bench of the Kerala High Court held that cosmetics and perfumeries under Entry 80 should also come within the ambit of tax and having regard to the context, the Court came to the conclusion that aggarbatti cannot be considered to be a "perfumery", akin to "talcum powder", the preceding words occurring in Entry 80 of the First Schedule. The case of CST v. Indian Herbs Research & Supply Company (1970) 25 STC 151 (SC) was considered and distinguished in the facts of the case.

10. In the case of CST v. Gordhandas Tokersey (1983) 52 STC 381 (Bom) the entry for consideration was Entry 19 of Schedule E to the Bombay Sales Tax Act which at the relevant period was as under:

19. Perfumes, depilatories and cosmetics (except soap and articles specified in Entry 7 in this Schedule).

11. The question before the Bombay High Court was whether sandalwood and sandalwood oil could be treated as "perfumes" and brought within that entry for taxation. In that case, it was laid down that the well-known rule of construction was that words in entries, such as Entry 19 of Schedule E to the Act have to be construed with reference to the words found in immediate connection with them. When two or more words which are capable of being understood in an analogous manner are coupled together, they should be understood in the common analogous sense and not in a general sense. By applying this principle, it was held that the word "perfumes" in Entry 19 refers to such preparations as are commonly known in the market for use on the body as perfumes.

12. Distinguishing the decision in the case of Indian Herbs case (1970) 25 STC 151 (SC) it was held that both sandalwood and sandalwood oil had a delicate fragrance and were priced on that account but everything that possessed a delicate fragrance was not necessarily a "perfume". Moreover, they were not used in personal toilet or for the beautification of the body as perfumes. Therefore, neither sandalwood nor sandalwood oil was "perfume" within the meaning of Entry 19 of Schedule E to the Bombay Sales Tax Act, 1959.

13. The Punjab and Haryana High Court examined the scope of Entry 16 of Schedule A of the Punjab Sales Tax Act in the case of Assessing Authority v. Amir Chand Om Prakash (197A) 33 STC 120 (P&H). The said Entry 16 was as follows: 16. Cosmetics, perfumery and toilet goods, but not including toothpaste, tooth powder, soap and kumkum.

The Court held that having regard to the context in which the word "perfumery" occurred, it could not be said that dhoop and aggarbatti were included in "perfumery".

14. The Orissa High Court in the case of Kumaru Zuman Khan v. State of Orissa (1981) 47 STC 22(Ori) was faced with the word "perfumery" being taken out of the original entry of the Orissa Sales Tax Act, 1947 which, was as under:

Perfumery, cosmetics, pomades and all toilet articles including toilet soaps.

15. With effect from 1.7.1971, "perfumery" was taken out of this category and was treated as luxury goods in Entry 36 of the Schedule. The Orissa High Court following the decision of this Court in the case Indian Herbs case (1970) 25 STC 151 (SC) came to the conclusion that "perfume" in ordinary sense covered dhoop and aggarbatti and held that aggarbattis in that case were rightly taxed as luxury goods.

16. We are of the view that the Orissa High Court overlooked the sense in which "perfumery" was used in the Orissa Sales Tax Act. Initially "perfumery" was included in the entry which included,

apart from "perfumery", cosmetics, pomades and all toilet articles. Having regard to the nature of the goods included in the entry, "perfumery" could not have been given an extended meaning to include aggarbattis. When "perfumery" was taken out of this entry and taxed as a luxury goods, a different and wider meaning could not be ascribed to it. No special definition was provided in the Act by which aggarbattis were included in "perfumery".

17. We are of the view, that the High Courts of Kerala, Bombay Punjab & Haryana were right in not giving an expanded meaning to "perfume" or "perfumery" and the Orissa High Court was in error in including aggarbattis within the definition of "perfumery".

18. In our judgment neither in common parlance nor by the dictionary meaning nor having regard to the context of Item 36 of the First Schedule of the Andhra Pradesh General Sales Tax Act can it be said that "perfumes" would include aggarbatti's for the purpose of imposition of sales tax.

19. In view of the aforesaid, the judgment under appeal dated 29.9.1989 is set aside. The appeals are allowed with no order as to costs.