Supreme Court of India
Pardeep Aggarbatti, Ludhiana vs State Of Punjab & Others on 23 October, 1997
Bench: S.P. Bharucha, S.C. Sen

PETITIONER:
PARDEEP AGGARBATTI, LUDHIANA

Vs.

RESPONDENT:
STATE OF PUNJAB & OTHERS

DATE OF JUDGMENT: 23/10/1997

BENCH:
S.P. BHARUCHA, S.C. SEN

ACT:

HEADNOTE:

JUDGMENT:

WITH C.A. Nos. 1176/92, 1177/92, 1178/92, 1179/92. O R D E R C.A.NO. 1175 of 1992 The judgment and order under appeal by special leave was delivered by a Division Bench of the High Court of Punjab and Haryana. it reversed the judgment and order of a learned Single Judge allowing the writ, petition filed by the appellant.

The appellant is a registered dealer in 'dhoop' and 'aggarbatti' and we are concerned with its assessment to sales tax thereon under the provisions of the Punjab General Sales Tax Act, 1948, for the period 1973-74.

Entry No.16 of Schedule A to the said Act. at the relevant time read thus;

"Cosmetics, perfumery and toilet goods, excluding tooth-paste, tooth-power, kum-kum and soap,"

The said Entry No.16 was broken up into Entries 16 and 16A by a notification dated 28th September, 1979. The new Entries read thus:

> "16. Cosmetics, and toilet goods excluding tooth-paste, tooth- powder, kum kum and soap. 16A. perfumery including dhoop and Aggarbati."

The appellant was sought to be made liable to pay sales tax at the rate of 10 paisa in a rupee, as was leviable upon items falling under the said Entry No.16, on the basis that 'dhoop' and 'aggarbatti' were covered by the word "perfumery" therein. The writ petition filed by the appellant there against was allowed by the learned Single Judge, who placed reliance upon the context in which the word "perfumery" was used in the said Entry No. 16. The Division Bench, in appeal, reversed the learned Single Judge, principally relying upon the judgment of this Court in Commissioner of Sales Tax, U.P. v. India Herbs Research and Supply Cp., 25 STC 151.

In case of Indian Herbs Research and Supply Co., strongly relied upon by learned counsel for the respondents, the relevant Entry read: "Scents and perfumes" in English and "Ttra tatha sugandhian" in Hindi. The question was whether "dhoop" or "dhoopbatti" fell within the description of "perfume" thereunder. This Court look the view that their was no warrant for restricting the meaning of the expression "perfume" to substances which emitted a fragrance in their natural state and not extending it to those which produced a fragrance as a result of the application of heat or some foreign matter to induce a chemical reaction which resulted in the odour being released. The word perfumes" in that entry, it was held, should he construed in its ordinary sense and "dhoop" and "dhoopatti", therefore, fell within that word.

Learned counsel or the appellant commended for our acceptance the reasoning of a Division Bench of the High Court at Bombay in the judgment in Commissioner of Sales Tax, Maharashtra State, Bombay, v. Gordhandas Tokersey, 52 STC 381. The question here was whether sandalwood and sandalwood oil were perfumes that fell within the entry "perfumes, depilatories and cosmetics". The Bombay High Court noted that it was a well-known rule of construction that words in such entries had to be construed with reference to the words found in immediate connection with them. When two or more words which were capable of being understood in an analogous manner were coupled together, they had to be understood in the common analogous sense and not in the general sense. Applying this rule of noseilur a sociis, the words "perfumes" in the entry was to be understood in conjunction with 'cosmetics' and 'depilatories'. In other words, the word "perfumes" referred only to such preparations as were commonly known in the market for use on the human body as perfumes. The Bombay High Court drew support from the judgment of the Madras High Court in Board Roberts adn Co. (India) Ltd. v. Board of Revenue (C.T.), Madras, 1942 STC 370,. here a Similar view had been taken. The Bombay High Court also drew support from the case of Assessing Authority v. Amir Chand Om Parkash, 33 STC 120, in which the Punjab & Haryana High Court had earlier construed the very same Entry No.16 which is now before us and held that 'dhoop' and 'aggarbatti' could not be held to be 'perfumery' within the meaning of that entry. The Bombay High Court distinguished the judgment of this Court in Indian Herbs Research & Supply Company by noting that this Court was not there required to consider the terms 'scent' and 'perfumes' in conjunction with articles of toilet or cosmetics; the words stood by themselves and there was no reason to limit them in any manner.

In Assessing Authority, Amritsar, and Another v. Amir Chand Om Prakash, 33 S.T.C. 121, a Division Bench of the Punjab & Haryana High Court, considered whether 'dhoop' and 'aggarbatti' fell within the ambit of the said Entry No.16. It held that they did not for two reasons. The first of the two reasons is no longer valid by reason of a subsequent amendment, but the second reason is till valid.

The Punjab & Haryana High Court said:

> "So far as dhoop and aggarbatti are concerned, there is another way of looking at the matter. The entry (i.e. entry No.16) is "cosmetics, perfumery and toilet goods...." The context in which the word "perfumery" occurs shows that what is meant by all the three general items "cosmetics, pefumery and toilet goods" are articles which are used for personal hygiene or pleasure. The items which are excepted from this entry are "tooth-paste, tooth-powder, soap and kum-kum." This viz., that only those articles of luxury, which are used for personal hygiene and pleasure were intended to be included in this entry. So the word "perfumery" in this context would not include dhoop and aggarbatti, which are never used for personal hygiene or pleasure, but are primarily used for religious ceremonies."

The Punjab & Haryana High Court's attention was drawn to this Court's judgment in the Indian Herbs Research and Supply Co.'s case and it came to the conclusion, having analysed it, that it was of no assistance because, as it has already held, the context in which the word 'perfumery' occurred in the said Entry No.16 indicated that it was used only in respect of items used for personal hygiene.

The judgment in Amir Chand Om Parkash was cited before the Division Bench that delivered the judgment under appeal. It noted, rightly, that the first ground upon which it had been held that 'dhoop' and 'aggarbatti' fell outside the word 'perfumery' in the said Entry No.16 no longer survived, but it was in error in distinguishing the judgment entirely on the ground that "Entry No.16A specifically mentions 'perfumery' as including Dhoop and aggarbatties". The second ground in the judgment, namely, that the context in which the word 'perfumery' was used in the said Entry No. 16 showed that it referred only to perfumes used for personal hygiene or pleasure, remained binding on the Division Bench that decided the present matter as also the finding that this Court's decision in the Indian Herbs Research and Supply Co. was distinguishable.

Entries in the Schedules of Sales tax and Excise statutes list some article separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of noscitur a sociis.

We are in no doubt whatever that the word "perfumery" in the said Entry No.16 draws colour from the words 'cosmetics' and 'toilet goods' therein and that, so read, the word 'perfumery' in the said Entry No.16 can only refer to such articles of perfumery as are used, as cosmetics and toilet goods are, upon the person. The word "perfumery" in the context in which it, is used has, therefore, no application to 'dhoop' and 'aggarbatti'. The distinction between the present case and the case o Indian Herbs Research and Supply Company is evident for the word 'perfumes' in the entry under consideration in the latter case was not limited by the words before and after, as in the entry before us; both the words 'scent' and 'perfumes' related to articles that produced fragrances.

Consequently, we are of the view that the judgment under appeal is erroneous and must be set aside.

The appeal is allowed. The judgment under appeal is set aside and the judgment of the learned Single Judge allowing the appellant's writ petition is restored. No order as to costs.

C.J.. Nos. 1176/92, 1177/92, 1178/92, 1179/92. Following the judgment just delivered in Civil Appeal No.1175/92, these appeals are allowed and the judgment under appeal is set aside.