

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
PRAKASH TRADING CO. AHMEDABAD

DATE OF JUDGMENT 22/08/1972

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1973 AIR 960 1973 SCR (1) 918
1972 SCC (2) 689

ACT:
Bombay Sales Tax Act, (51 of 1959) as amended by Gujarat Act 25 of 1962, Sch. C. entry 28 and Sch. E, entry 21A-Liquid soap, tooth paste and tooth brush whether toilet articles.

HEADNOTE:
Entry 28 of Schedule C of the Bombay Sales Tax Act, 1959, as amended by the Gujarat Act. 1962, pertains to soaps. Entry 21A of Schedule E deals with toilet articles excluding soap as specified in Entry 28 in Schedule C. and Entry 22 of Schedule E is a residuary entry relating to all goods other than those specified from time to time in the Schedules and in the preceding entries.
On a reference under s. 61 of the Act, the High Court held that Colgate tooth paste and Colgate tooth brush were not toilet articles falling under Entry 21A but were covered by the residuary Entry 22; and that Palmolive Shampoo was soap within the meaning of Entry 28 of Schedule C.
In appeal to this Court,
HELD : (1) Colgate tooth paste and brush are toilet articles under Entry 21A, Sch.E.
(a) in Sarin Chemical Laboratory v., Commissioner of Sales Tax, U.P. (1970) 26 S.T.C. 339 (SC), this Court came to the conclusion that tooth powder was a toilet requisite. Moreover, this Court by approving in Sarin Chemical Laboratory Case the decision of the Bombay High Court in Commissioner of Sales Tax v., Vicco Laboratories (1968) 22 S.T.C. 169, approved the view that for the purpose of Bombay, Sales-Tax Act also dental powder is a toilet article. The reasoning given by this Court in respect of tooth powder in Sarin Chemical Laboratory's case holds equally good for tooth paste. [920F; 921D-F]
(b) The dictionary meaning of the word 'toilet' as "an act or process of cleansing one's person" shows that a tooth brush, which is meant for cleansing one's teeth, is also a toilet article. If a tooth brush is in fact used for cleansing one's teeth it must be held to be an article of toilet even teeth may also be cleansed without the use of a tooth brush. [920G-H; 921F-G]
(2) Shampoo is a kind of liquid soap. It has all the ingredients of a soap though the proportion of ingredient

differs from those of a soap in the form of a cake. But that fact would not alter the basic character of shampoo and take it out of the category of soaps. The High Court was therefore right in holding that the Shampoo falls under Entry 28, Schedule C. [922C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : C.A. No. 37 of 1969.

Appeal by special leave from the judgment and order dated July 3, 1968 of the Gujarat High Court in Sales Tax Reference No. 3 of 1967.

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M. C. Bhandare and S. P. Nayar, for the appellant.

M. C. Chagla and I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

Khanna, J. This appeal by special leave is directed against the judgment of Gujarat High Court in a reference made to it under section 61 of the Bombay Sales Tax Act, 1959 (Bombay Act 51 of 1959) as amended by the Bombay Sales Tax (Gujarat Amendment) Act, 1962 (Gujarat Act 25 of 1962) (hereinafter referred to as the Act).

The respondent made an application under section 52 of the Act to the Deputy Commissioner of Sales Tax for determination of the rate of tax payable on sale of five articles, including Palmolive shampoo, large size, Colgate tooth paste, giant size and Colgate tooth brush for adult use. It was urged by the respondent before the Deputy Commissioner that Palmolive shampoo was a kind of liquid soap and was covered by entry 28 of schedule C to the Act. As regards Colgate dental paste and Colgate tooth brush, the respondent submitted that those were articles meant for cleansing teeth and were not toilet articles. These contentions were repelled by the Deputy Commissioner, who held that the aforesaid three articles were toilet articles within the meaning of entry 21A of schedule E to the Act and liable to tax accordingly. The Gujarat Sales Tax Tribunal on appeal took the same view as had been taken by the Deputy Commissioner. On application filed by the respondent, the following two questions were referred by the Tribunal to the High Court:

"1. Whether on the facts and in the circumstances of the case Palmolive Shampoo (Large Size) sold under Bill No. 505 dated July 15, 1964 is a toilet article within the meaning of Entry 21A of Schedule E or is soap within the meaning of Entry 28 of Schedule C or is covered by Entry 22 of Schedule E to the Bombay Sales Tax Act, 1959 and liable to tax accordingly.

2. Whether on the facts and in the circumstances of the case (1) Colgate Tooth Paste and (2) Colgate Tooth Brush sold under Bill No. 5'05 dated July 15, 1964 are toilet articles within the meaning of Entry 21A of Schedule E or are covered by Entry 22 of Schedule E to the Bombay Sales Tax Act, 1959 and liable to tax accordingly".

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The answer of the High Court on the first question was that Palmolive shampoo was not a toilet article within the meaning of entry 21A of schedule E to the Act but was scrap within the meaning of entry 28 of schedule C and was liable to be taxed accordingly. As regards question No. 2, the

answer of the High Court was that Colgate tooth brush and Colgate tooth paste were not toilet articles falling in entry 21A of schedule E but were covered by the residuary entry 22 of schedule E and were liable to-be taxed accordingly.

In appeal in this Court Mr. Bhandare on behalf of the appellant has argued that all the three articles in question, namely, Palmolive shampoo, Colgate tooth paste and Colgate tooth brush are toilet articles as mentioned in entry 21A of schedule E to the Act. As against that Mr. Chagla on behalf of the respondent has canvassed for the correctness of the view of the High Court.

We may at this stage refer to the three entries with which we are concerned. Entry 28 of schedule C to the Act pertains to soaps. Entry 21A of schedule E to the Act deals with the following goods:

21A. Toilet articles including hair cream and hair ionic; and perfumes, depilatories and cosmetics (except soap as specified in entry 28 in schedule C and hair oil as specified in entry 7 of this schedule)."

Entry 22 is a residuary entry and relates to "all goods other than those specified from time to time in schedules A, B, C and D in the preceding entries."

So far as Colgate tooth paste is concerned, we find that the matter is concluded by a decision of this Court in the case of Sarin Chemical Laboratory v. Commissioner of Sales Tax, U.P.(1). It was held in that case that tooth powder is a toilet requisite and was liable to sales tax as such. Reference in this connection was made to the dictionary meaning of the words "cosmetic", "toilet" and "toiletry". "Cosmetic", according to 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" as "an act or process of dressing, especially formerly of dressing hair and now usually cleansing and grooming of one's person". "Toiletry" according to the dictionary, is "an article or preparation used in making one's toilet such as soap, lotion, cosmetic, tooth-paste,

(1) [1970] 26 S.T.C. 339.

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shaving cream, cologne etc." It was further observed by this Court that according to the dictionary meaning, tooth powder was regarded both as an item of cosmetic and toilet and that in common parlance, tooth powder was considered to be an article of toilet. As such, the Court came to the conclusion that tooth powder was a toilet requisite. The reasoning given by this Court in respect of tooth powder in the above cited case, in our opinion, holds equally good for tooth paste. Likewise, the dictionary meaning of the word "toilet" relied upon in the above case "as an act or process of cleansing of one's person" shows that a tooth brush which is meant for cleansing one's teeth is a toilet article.

Mr. Chagla has tried to distinguish the case of Sarin Chemical Laboratory (supra) on the ground that was a case under the U.P. Sales Tax Act, while we are dealing with a case under the Bombay Sales Tax Act. This submission is clearly untenable, because we are concerned with the concept of a toilet article as understood in common parlance. Neither the Bombay Sales Tax Act nor the U.P. Sales Tax Act contained any special definition of the toilet articles and, as such, the reasoning in the case of Sarin Chemical Laboratory (supra) cannot be held to relate only to cases

under the U.P. Sales Tax Act. Apart from that, we find that in the case of Sarin Chemical Laboratory (supra) this Court approved of the decision of the Bombay High Court in Commissioner of Sales Tax v. Vicco Laboratories (1). In the last mentioned case it was held by the Bombay High Court that Vicco Vajradanti dentifrice in the form of a powder used for cleansing teeth was a toilet article. It would, therefore, follow that this Court has set its seal of approval on the view that for the Bombay Sales Tax Act also, dental powder used for cleansing of tooth is a toilet article.

We are also unable to accede to the submission of Mr. Chagla that as tooth can also be cleansed without the use of tooth brush, the same is not a toilet article. The question with which we are concerned is not whether the use of tooth brush can be dispensed with, but whether it is actually used for the purpose of cleansing one's teeth. If the tooth brush is, in fact, used for cleansing one's teeth, the same must be held to be an article of toilet.

The view taken by the High Court regarding shampoo that it constitutes soap, in our opinion, is well founded. The High Court in this respect has referred to the following passage in the Encyclopedia of Chemical Technology:

"The soaps used for shampooing the hair are essentially the same as those described under 'soap'."

(1) [1968]22 S.L.C. 169.
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See Cosmetics Vol. 6 P. 550 soap). They are available in several forms; bar, cake, liquid, powder (or granules) and jolly. Although there will undoubtedly always be numbers of individuals who will wash their hair with any cake of soap that may be at hand, the prepared liquid shampoos have rapidly risen to first place in the retail trade. The bars and cakes are shoved down, the granules are dissolved and the jollies are diluted, to prepare liquid shampoo of the desired concentration...."

The High Court concluded from the above that Palmolive shampoo was soap covered by entry 28 of schedule C to the Act. We agree with the High Court in this respect and are of the opinion that shampoo is a kind of liquid soap. It has all the essential ingredients of a soap. It may be that the proportion of the ingredients of the liquid soap differ from those of a soap in the form of a cake but that fact would not alter the basic character of shampoo and take it out of the category of soaps.

As a result of the above, we partly accept the appeal and set aside the judgment of the High Court in so far as it relates to tooth paste and tooth brush. Both of them, in our opinion, are toilet articles within the meaning of entry 21A of schedule E to the Act. We, however, uphold the judgment of the High Court in so far as the High Court has held that shampoo is soap within the meaning of entry 28 of schedule C to the Act. In view of the partial success of each party, we leave the parties to bear their own costs of this Court as well as in the High Court.

V.P.S.
allowed
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Appeal partly