Before; J. M. Tandon, J.

PARDEEP AGGARBATTI,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 821 *of* 1981

May 2, 1984.

Punjab General Sales Tax Act (46 *of* 1948)—*Section* 5 *and Schedule—A Entry* 16 (*as it stood in* 1973-1974)—*Dhoop and Agarbatti—Whether a perfume as defined in Entry No.* 16 *of Schedule—A—Such goods—Whether liable to Sales Tax at the rate of* 6 *per cent.*

Held, that Dhoop and Aggarbatti are primarily used for religious ceremonies and are not used for personal hygiene or pleasure. The word 'perfumery' used in Entry No. 16 in Schedule-*A* to the Punjab General Sales Tax Act, 1948, therefore, can not be interpreted to include Dhoop and Aggarbatti and as such would be liable to tax at the rate of 6 per cent as provided by section 5 of the Act.

(Para 11).

Civil Writ Petition under Articles 226/227 *of the Constitution of India, praying that* :—

(i) *the records of the case be summoned;*

(ii) *a writ in the nature of* Certiorari, Mandamus *or any other appropriate writ, direction or order for quashing the orders of respondent No.* 2, *Annexure 'P-*1', *respondent No.* 3, *Annexure 'P-*3' *and respondent No.* 4, *Annexure 'P.*4' *and for direction to the respondents not to realize the additional demand at the rate of* 10 *per cent and further praying that pending the decision of this writ petition the recovery of additional demand be stayed and the cases of petitioner already decided be not reopened.*

(iii) *the condition of serving prior notices of motion on the respondents and filing of the certified copies of the Annexures be also dispensed with.*

It is further prayed that pending decision of this writ petition in this Hon'ble Court, the recovery proceedings of the excess and enhanced Sales Tax may also be stayed.

Bh. Dass, Sr. Advocate, with V. P. Sharda, Advocate, *for the Petitioner.*

D. S. Brar, A.A.G., Punjab, *for the Respondent.*

JUDGMENT

J. M. Tandon, J.

(1) The petitioner-firm is a registered dealer under the Punjab General Sales-Tax Act, 1948 (hereinafter the Act) for the sale of *Dhoop* and *Aggarbatti.* It filed quarterly return for the assessment year 1973-74 and claimed that the sales of *Dhoop* and *Aggarbatti* be assessed at the rate of 6 per cent. The Assessing Authority did not agree and levied sales-tax at the rate of 10 per cent,—*vide* order, dated November 29, 1976, (P.1). The petitioner filed an appeal against the order P.1 which was accepted by the Appellate Authority,—*vide* order, dated August 10, 1978, (P.2). The order of the Assessing Authority (P.1) was set aside and the Assessing Authority was directed to calculate the sales-tax on the sales of *Dhoop* and *Aggarbatti,* at the rate of 6 per cent instead of 10 per cent. The Joint Excise and Taxation Commissioner initiated *suo motu* revisional proceedings to examine the legality or propriety of the order, P.2 and,—*vide* order, dated May 22, 1979, (P.3) set aside the same and restored that of the Assessing Authority (P.1), holding that the *Dhoop* and *Aggarbatti* were liable to tax at the rate of 10 per cent. The petitioner filed a revision against the order P.3 which was dismissed by the Sales Tax Tribunal,—*vide* order, dated August 14, 1980, (P.4). The petitioner has assailed the orders P.1, P.3 and P.4 in the present writ.

The relevant part of section 5 of the Act reads :

> "Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates, not exceeding seven paise in a rupee as the State Government may by notification direct:
>
> Provided that a tax at such rate, not exceeding ten paise in a rupee, as may be so notified, may be levied on the sale of luxury goods as specified in Schedule A appended to this Act from such date as the State Government may by notification direct. The State Government after giving by notification not less than twenty days' notice of its intention so to do may by like notification add to, or delete from, this schedule, and thereupon this schedule shall be deemed to have been amended accordingly."

(2) The word "luxury" was omitted with retrospective effect,—*vide* notification, dated February 27, 1976. Entry No. 16 of

Schedule 'A' before its substitution,—*vide* notification, dated September, 28, 1979, read :—

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

This entry No. 16 was substituted by two entries Nos. 16 and 16-A, with effect from September 28, 1979, and the substituted entries read:—

"16. Cosmetics, and toilet goods excluding tooth-paste, tooth powder, kum-kum and soap.

16-A. Perfumery including *dhoop* and *Aggarbatti.*

(3) In view of the fact that the word "luxury" was omitted from proviso to section 5 of the Act and that too with retrospective effect, it shall be assumed that it did not exist there in 1973-74. The word "perfumery" was included in entry No. 16 of Schedule 'A' to the Act before its substitution in 1979. The Supreme Court in *Commissioner of Sales Tax, U.P.* v. *Indian Herbs Research and Supply Co.* (1), held that the word "perfume" in item No. 37 of Notification No. 905/X, dated March 31, 1956, issued under section 3-A of the U.P. Sales Tax Act, 1948, should be construed in its ordinary sense, i.e., as meaning 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. "Dhoop" and dhoop-batti", therefore, fall within the category of "perfume" under item No. 37 and their sales are liable to the higher rate.

(4) In *Prakash Stores* v. *State of Tamil Nadu,* (2), the point in issue was whether certain articles which were used as raw materials for the manufacture of scented sticks could be classified as scents or perfumes within the meaning of entry 51 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. The High Court, applying the ratio of *Indian Herbs Research and Supply Company's case* (supra) held that these raw materials were also perfume because sweet and pleasant smell enmanate from them and also they did not appear to require sufficient heat for the odoriferous element

(1) (1970) 25 S.T.C. 151.
(2) (1976) 38, S.T.C. 300.

to evaporate. The question of interpreting the words "scent" or "perfume" in entry 51 in the context of other words used therein was neither raised nor considered in that case.

(5) The learned counsel for the State has argued that *Dhoop* and *Aggarbatti* are included in the word "perfume" as held by the Supreme Court in *Indian Herbs Research and Supply Co.'s case* (supra) and the Madras High Court in *Prakash Store's case* (supra). *Dhoop* and *Aggarbatti* shall, therefore, be covered by entry No. 16 of Schedule 'A' to the Act before its substitution in 1979 and as such they are liable for enhanced sales-tax at the rate of 10 per cent.

(6) The learned counsel for the petitioner has argued that the context in which the word "perfume" occurs in entry No. 16, it cannot include *Dhoop* and *Aggarbatti*. Reliance has been placed on *Assessing Authority, Amritsar, and another* v. *Amir Chand Om Parkash,* (3), and *Commissioner of Sales-tax, Maharashtra State, Bombay* v. *Gordhandas Tokersey,* (4). The contention of the learned counsel for the petitioner must prevail.

(7) It has been held in *Amir Chand Om Parkash's case* (supra):

> "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 contex in which the word 'perfumery' occurs shows that what is meant by all the three general items 'cosmetics, perfumery 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 exception also points to the same conclusion, 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 ths context would not include *dhoop* and *aggarbatti*, which are never used for personal hygiene or pleasure, but are primarily used for religious ceremonies."

(3) (1974) 33 S.T.C. 120.

(4) (1983) 52 S.T.C. 81.

(8) A similar view has been taken by the Bombay High Court in *Gordhandas Tokersey's case* (supra). It was held that it is a rule of construction that words in entries such as entry 19 of Schedule E to the Bombay Sales Tax Act, 1959, 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. It was further held that neither Sandalwood nor sandalwood oil are perfumes within the meaning of entry 19 of Schedule E to the Bombay Sales Tax Act, 1959. In this case, the view taken by the Punjab and Haryana High Court in *Amir Chand Om Parkash's case* (supra) was taken notice of and followed.

(9) In *Indian Herbs Research and Supply Co.'s case* (supra), the Supreme Court interpreted the word 'perfume' in isolation whereas the word 'perfumery' was interpreted in *Amir Chand Om Parkash's case* (supra) in the context it has been used in entry No. 16 of Schedule 'A' to the Act. The Bombay High Court in *Gordhandas Tokersey's case* (supra) also interpreted the words in the context they had been used.

(10) In *A. Boake Roberts and Co. (India) Ltd.* [*now Bush Boake, Allen (India) Ltd.*] v. *The Board of Revenue (Commercial Taxes), Chepauk, Madras,* (5), the Madras High Court was required to consider entry 51 of the First Schedule to the Tamil Nadu General Sales Tax, Act, 1959, prior to its amendment by Act 7 of 1977. The relevant entry 51 described the goods as "Scents and perfumers, powders, snows (including all purpose creams and cold and vanishing creams) and scented hair oils". It was held that if "scents and perfumes" had stood by themselves without anything else being mentioned, then they could have been construed in a wider sense, and the fact that although heat had to be applied or that the substance was required to be mixed with some other substance to produce a chemical compound which would result in any fragrance being produced, would not alter the effect of the substance being construed as a perfume. But in construing particulr words in any entry like entry 51, it is not as though one must take any particular item, find out its dictionary meaning or the meaning attributable to that particular item and disregard the effect on that item arising from its association with other items and the

(5) (1978) 42 S.T.C. 270.

limitation or expansion of the meaning of that item by such association. It was further held that the word "perfumes" in that entry referred to items of toilet preparations and, therefore, synthetic essential oil was not a perfume within the meaning of that entry.

(11) *Dhoop* and *Aggarbatti* are primarily used for religious ceremonies and are not used for personal hygiene or pleasure. It has been so held in *Amir Chand Om Parkash's case* (supra). The word "perfumery" used in entry No. 16 before its substitution in 1979 in Schedule 'A' to the Act, therefore, cannot be interpreted to include *Dhoop* and *Aggarbatti*. It is not disputed that in case *Dhoop* and *Aggarbatti* are not covered by entry No. 16, they shall be liable to tax at the rate of 6 per cent and not 10 per cent in 1973-74.

(12) In view of discussion above, the writ petition is allowed and the impugned order of the Joint Excise and Taxation Commissioner, dated May 22, 1979, (P.3) and that of the Sales Tax Tribunal, dated August 14, 1980, (P.4) are set aside. No order as to costs.

N. S. S.

Before M. M. Punchhi, J.

THE AMBALA BUS SYNDICATE,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3013 *of* 1978.

May 1, 1984.

Industrial Disputes Act (XIV of 1947)—Section 33C(2)—Employer not wanting to retain a workman in service because of complaints received against him—Workman agreeing to do some other duty at a reduced salary so as to remain under check—Management giving him alternative job and reducing his salary—Workman claiming the difference between his original salary and the reduced salary—Such claim—Whether maintainable under section 33C(2).

Held, that the language of the order is rather meaningful. The post given to the workman was an 'alternative duty' only to avoid