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Ayurveda Pharmacy and anr. Vs. State of Tamil Nadu

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Court : Supreme Court of India

Decided On : Mar-15-1989

Reported in : AIR1989SC1230; 1989(40)ELT273(SC); JT1989(1)SC539; 1989(1)SCALE624; (1989)2SCC285; [1989]2SCR37; [1989]73STC346(SC); 1989(2)LC116(SC)

Judge : R.S. Pathak, C.J. and; Ranganath Misra, J.

Acts : Tamil Nadu General Sales Tax Act; Constitution of India - Articles 14 and 19(1)

Appeal No. : Civil Appeal No. 1868 of 1974 (From the Judgment and Order dated September 2, 1974 of the Madras Hig

Appellant : Ayurveda Pharmacy and anr.

Respondent : State of Tamil Nadu

Advocate for Pet/Ap. : F.S. Nariman, Senior Adv.; C.S. Vaidyanathan and; K.R. Nambiar

Judgement :

R.S. Pathak, C.J.

1. The appellants in these two appeals are manufacturers of Ayurvedic drugs and medicines, including Arishtams and Asavas. Arishtams and Asavas contain

alcohol, and it is said that the presence of alcohol is essential for the effective and easy absorption of the medicine by the human system and also because it acts as a preservative. All the Ayurvedic preparations as well as Allopathic, Siddha and Unani medicines were originally subject to a multipoint levy of 3 1/2% under the Tamil Nadu General Sales Tax Act, 1959. By a notification dated 4 March, 1974, the State of Tamil Nadu included a large number of items in the First Schedule to the aforesaid Act in order to make them subject to a single-point levy. While all other patent or proprietary medicinal preparations belonging to the different systems of medicines were taxed at' the rate of 7% only, arishtams prepared under the Ayurvedic system were made subject to a levy of 30%. It seems that representations were made to the State Government against the high rate of tax on Arishtams, and therefore a separate entry was introduced by Tamil Nadu Act No. 23 of 1974 in the First Schedule as item 135 dealing specifically with Arishtams and Asavas. They were shown as attracting a rate of 30% while all other medicinal preparations were shown under item No. 95 and subjected to tax at 7%.

2. The appellants filed writ petitions in the High Court of Madras challenging the levy at 30% on Arishtams and Asavas, but on 2 September, 1974 the High Court dismissed the writ petitions.

3. From the counter-affidavit filed by the Government of Tamil Nadu in the writ petition, out of which one of the present appeals arises, it appears that the higher levy of sales tax on Arishtams and Asavas was introduced by the State Legislature to curb the abuse of medicinal preparations for their alcoholic content by drink addicts and to eliminate the mushroom growth of Ayurvedic Pharmacies preparing sub-standard Arishtams and Asavas for purposes other than medicinal use. The appellants contend that Arishtams and Asavas manufactured by them are essentially Ayurvedic medicines, and that in any event the object of controlling the consumption of liquor is amply served by several other existing statutes, including the Medicinal and Toilet Preparations (Excise Duty) Act, 1955, Drugs and Cosmetics Act, 1940, as amended in the year 1964, and Spirituous Preparations (Inter State Trade and Commerce) Control Act, 1955. It is said that there are over 130 Allopathic medicines containing alcohol which are potable as against only

three Ayurvedic medicines, and that therefore the levy of tax at 30% on Arishtams and Asavas alone while other medicinal preparations are subjected to tax at 7% (now increased to 8%) results in an invidious .... discrimination against the manufacturers of those Ayurvedic preparations thus violating Article 14 of the Constitution. It is contended that the impugned rate of tax also offends Article 19(1)(g) of the Constitution. The appellants in Civil Appeal No. 1868 of 1974 have also taken the point that the high rate of tax on Arishtams and Asavas has been imposed by the State of Tamil Nadu with the object of discouraging the import of these Ayurvedic medicines from the neighbouring State of Kerala, and consequently the measure is violative of Article 301 as well.

4. While dismissing the writ petitions the High Court observed that the imposition of the rate of 30% on the sale of Arishtams and Asavas must be regarded principally as a measure for raising revenue, and it repelled the argument that the rate of tax was discriminatory or that Article 19(1)(g) was infringed It rejected the plea of the appellants that Article 301 was contravened and refused to accept that there was any ulterior object in imposing a higher rate of tax on those two commodities.

5. Now there is no doubt that Arishtams and Asavas are Ayurvedic medicinal preparations. The question is whether these two medicines attract different considerations from those applied to other medicinal preparations. Reference is made by the State to their high content of alcohol, and that, it is said, attracts a class of customers who purchase them for their alcoholic content rather than their medicinal value. On that basis, it is urged, there is justification for a higher rate of tax.

6. We think that the appeals are entitled to succeed. Item 95 mentions the rate of 7% (now 8%) as the tax to be levied at the point of first sale in the State. Item 135 provides a rate of 30% in respect of Arishtams and Asavas at the point of first sale. We see no reason why Arishtams and Asavas should be treated differently from the general class of Ayurvedic medicines covered by Item 95. It is open to the Legislature, or the State Government if it is authorised in that behalf by the Legislature, to select different rates of tax for different commodities. But where the

commodities belong to the same class or category, there must be a rational basis for discriminating between one commodity and another for the purpose of imposing tax. It is commonly known that considerations of economic policy constitute a basis for levying different rates of sales tax. For instance, the object may be to encourage a certain trade or industry in the context of the State policy for economic growth, and a lower rate would be considered justified in the case of such a commodity. There may be several such considerations bearing directly on the choice of the rate of sales tax, and so long as there is good reason for making the distinction from other commodities no complaint can be made. What the actual rate should be is not a matter for the courts to determine generally, but where a distinction is made between commodities falling in the same category a question arises at once before a Court whether there is justification for the discrimination. In the present case, we are not satisfied that the reason behind the rate of 30% on the turnover of Arishtams and Asavas constitutes good ground for taking those two preparations out from the general class of medicinal preparations to which a lower rate has been applied. In Adhyaksha Mathur Babu's Sakji Oushadhalaya Dacca (P) Ltd. v. Union of India : [1963]3SCR957 , this Court considered whether the Ayurvedic medicinal preparations known as Mritasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura, prepared in accordance with an acknowledged Ayurvedic formula, could be brought to tax under the relevant State Excise Act when medicinal preparations I were liable to excise duty under the Medicinal and Toilet Preparations (Excise Duty) Act, which was a Central Act. The Court held that the three preparations were medicinal preparations, and observed that the mere circumstance that they contained a high percentage of alcohol and could be used as ordinary alcoholic beverages could not justify their being treated differently from other medicinal preparations. The Court said (at p. 629 of AIR).

So if these preparations are medicinal preparations but are also capable of being used as ordinary alcoholic beverages, they will fall under the (Central) Act and will be liable to duty under item No. 1 of the Schedule at the rate of Rs. 17,50np per gallon of the strength of London proof spirit. On a consideration of the material that has been placed before us, therefore, the only conclusion to which we can come is that these preparations are medicinal preparations according to the standard Ayurvedic text books referred to already, though they are also capable of being

used as ordinary alcoholic beverages. They cannot however be taxed under the various Excise Acts in force in the concerned States in view of their being medicinal preparations which are governed by the Act.

We are of opinion that similar considerations should apply to the appeals before us. The two preparations, Arishtams and Asayas, are medicinal preparations, and even though they contain a high alcohol content, so long as they continue to be identified as medicinal preparations they must be treated, for the purposes of the Sales Tax Law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol. On this ground alone the appellants are entitled to succeed.

7. In the circumstances, we do not consider it necessary to enter upon the question whether there is substance in the complaint of the appellants that' there is a violation of Article 301 of the Constitution.

8. In the result, the appeals must be allowed and the appellants held entitled to a refund of the excess paid as sales-tax on account of the turnover being treated under Item 135 rather than under Item 95. Learned Counsel for the appellants states that the appellants will inform all their customers, from whom the higher rate has been charged, that the customers are entitled to a refund of the excess paid by them and that an application will be invited for such refund and that if any part of the excess remains undefended to the customers the appellants undertake that such balance will be paid over to the Arya Vaidya Rama Varier Educational Foundation of Ayurveda.

9. The appeals are allowed, the judgment and order of the High Court on each writ petition are set aside and the Sales-tax Authorities are directed to reassess the turnover of the Arishtams and Asavas at the rate mentioned in Item No. 95 and to refund to the appellants the amount of tax paid in excess. The appellants, in their turn, on obtaining such refund will, within one month thereof, serve notice on the customers from whom such excess has been recovered to obtain a refund from the appellants of such corresponding excess. In the event of any balance of the excess remaining unrefunded by the appellant to the customers upon the expiry of three months from such notice, the balance will be paid over by the appellants to

the Arya Vaidya Rama Varier Educational Foundation of Ayurveda. There is no order as to costs.

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