

(1959) 07 BOM CK 0028

Bombay High Court**Case No:** Sales Tax References No"s. 19 and 20 of 1958

Plastella and Co.

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision: July 23, 1959**Citation:** (1959) 10 STC 511**Hon'ble Judges:** Shah, J; S.T. Desai, J**Bench:** Division Bench**Advocate:** S.P. Mehta, for the Appellant; G.N. Joshi, for the Respondent

Judgement

Shah, J.

These two references raise common questions and we propose to dispose of the same by a common judgment. The two references relate to two periods 1st of November, 1952, to the 31st of March, 1953, and the 1st of April, 1953, to the 31st of March, 1954. For the first period upto the 24th March, 1953, the liability to tax was to be assessed under the Sales Tax Ordinance (No. 2) of 1952 and for the remaining seven days it was governed by the Bombay Sales Tax Act, 1953. For the second period the liability to tax was to be assessed under the Bombay Sales Tax Act, 1953. At the relevant time, the goods sold which were rendered liable to sales tax were charged with payment of general tax and certain goods were liable to payment of special tax as well. There is no dispute in this case that the sales in respect of plastic combs are liable to pay general tax and the only dispute is about the liability to pay special tax. On 1st of November, 1952, under the Bombay Sales Tax Ordinance (No. 2) of 1952 in Schedule II there were two relevant entries. By the 30th entry a liability to pay special tax at the rate of 9 pies in the rupee was imposed upon perfumery (excluding synthetic essential oils), cosmetic and toilet articles, except soaps and other articles as may be specified by the State Government by notification in the Official Gazette. By entry No. 33 a special tax of 3 pies in the rupee was imposed upon plastic sheets, fabrics and articles made of plastic.

2. In exercise of the powers conferred upon the Government by entry No. 30 to exempt certain articles as may be specified by Notification, the Government of Bombay by Notification dated the 1st of November, 1952, purported to exclude certain classes of articles including combs other than those intended for being worn in the hair. Evidently such combs could be of plastic material or of other material but all combs which were not intended for being worn in the hair were excluded from payment of tax under entry No. 30. It is true that combs which were made of plastic material would still be articles made of plastic within the meaning of entry No. 33. As the same article would fall within two different entries, the court must make an attempt to reconcile the entries. If by a special notification it was intended to exclude combs including combs made out of plastic materials from liability to payment of sales tax under entry No. 30, we would require a very much stronger indication than the mere generic description in entry No. 33 referring to articles made out of plastic as including combs made of plastic and liable to tax imposed by that entry. It is true that entry No. 33 was amended as from the 1st of January, 1953, and it was divided into four sub-heads. Under the second and third sub-heads, articles made of plastic sold at the rate not exceeding annas 12 each or when sold by length at a rate not exceeding annas 12 per yard and all other articles made of plastic were made liable to a special tax of nine pies in the rupee. The only substantial difference made by the amendment on the 1st of January, 1953, is to divide the plastic sheets, fabrics and materials into different classes and to provide for varying rates of taxation. If under entry No. 33 as it originally stood there was no liability to pay special tax in respect of other articles made of plastic, by the classification made in the amended entry on the 1st of January, 1953, no such liability can be regarded as imposed. It may be observed that entry No. 30 substantially deals with toilet articles and normally under the connotation of the expression "toilet article" a comb may be regarded as included. If, for certain reasons, the Government in exercise of its powers sought to exclude all combs including combs made of plastic materials from liability to pay a special tax under entry No. 30 we will not be justified in holding that they were still liable to a special tax under the head of "articles made of plastic" in entry No. 33. We are unable to agree with the view of the Tribunal that the circumstance that it was on the 1st of November, 1952, the notification was issued by the Government excluding combs other than combs intended for being worn in the hair made any difference in the interpretation of the two entries and the notification.

3. On the view taken by us the following question submitted by the Tribunal,

"Whether upon a proper construction of entries 30 and 33 in Schedule II to the Bombay Sales Tax (No. 2) Ordinance, 1952, read with notification No. 8 in Schedule IV of the said Ordinance of 1952, the applicants were rightly assessed to special tax for the periods from 1st November, 1952, to 31st March, 1953, and 1st April, 1953, to 31st March, 1954, on their sales of combs made of plastic" will be answered in the negative.

4. The State to pay the costs of the assesseees in both the references. Costs quantified at Rs. 250. One set of costs in these two references.
5. References answered in the negative.