

Innamuri Gopalan and Others

Vs

State of Andhra Pradesh and Anr.

Civil Appeal No. 488 of 1962

(B. P. Sinha, J. C. Shah, N. Rajgopala Ayyngar JJ)

08.04.1963

JUDGMENT

AYYANGAR J. –

The proper construction and legal effect of a notification under s. 9(1) of the Andhra Pradesh General Sales Tax Act, 1957 (A.P. VI of 1957) which for shortness we would call the Act, is the principal question that arises for consideration in this appeal by special leave in which the correctness of the decision of the High Court dismissing a Writ Petition filed by the appellant is challenged.

Section 5 of the Act is the charging section under which dealers are liable to pay sales tax on their turnover. Under sub-s. (3)(a) of this section, read with Sch. II to the Act cotton textile goods which was the commodity in which the appellants were dealing, were liable to tax at a single point. Section 9 of the Act enabled the State Government to exempt the tax leviable under the Act. In exercise of the power thus conferred a notification was issued on December 13, 1957, which read :

"In exercise of the powers conferred by sub-Section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, (Andhra Pradesh Act VI of 1957, hereinafter referred to as the said Act) the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, with effect on and from the 14th December, 1957, the sale or purchase of any of the goods appended hereto :

Provided that in the case of any class of such goods in respect of which additional duties of excise are leviable by the Central Government under clause 3 of the Additional Duties of Excise (Levy and Distribution) Bill, 1957, read with s. 4 of the provisional Collection of Taxes Act, 1931 (Central Act XVI of 1931), the exemption shall be subject to the following conditions, namely :-

1. The dealer shall prove to the satisfaction of the assessing authority that additional duties of excise have been so levied and collected on such goods by the Central Government, in default of which the dealer shall be liable to pay the tax under the said Act in respect of such goods.
2. Any dealer who is so liable to pay the tax may, at his option, pay, in lieu thereof a lump sum by way of compensation determined in the manner specified in condition (3).

#....."##

As nothing turns on the terms of condition 3 with which the notification ends it is not set out. The appendix which is referred to in the opening paragraph has three clauses the first of which is the only material one and this runs :

"1. All varieties of textiles, viz., cotton, woollen or silken including rayon, art silk or nylon, whether manufactured by handloom, powerloom or otherwise;"

Pausing here, it is necessary to set out the terms of cl. 3 of the Additional Duties of Excise Bill, 1957, which is referred to in the proviso to the opening paragraph of the notification. Though the Bill was later passed into law and became an Act, we shall refer to the Bill conformably to the phraseology of the notification. Clause 3(1) which is the relevant portion of that clause reads :

"3. (1) There shall be levied and collected in respect of the following goods, namely, sugar, tobacco, cotton fabrics, rayon or artificial silk fabrics and woollen fabrics produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto, duties of excise at the rates specified in the First Schedule to this Act."

How the matter came before the High Court was briefly this. There was no dispute that the appellants were and are doing business in the purchase and sale of textile goods. They claimed exemption from the payment of sales tax in respect of goods in stock with them on December 14, 1957, relying on the notification are out earlier. The Sales Tax authorities, however, rejected this claim and as a result a Writ Petition was filed in the High Court under Art. 226 by the appellants praying for a direction for quashing the notice issued by the Sales Tax Department of the Government of Andhra Pradesh calling upon them to pay the sales tax on these goods. It is now necessary to mention that the validity of the action of the Sales Tax Officials - the Commercial Tax Officer, the second respondent, - making the demand was impugned by the appellants not merely on the ground that no tax was payable by them by reason of the above notification but also on various other grounds including the constitutional invalidity of the Sales Tax Act itself and in particular the provisions imposing sales tax on textile goods. The learned Judges dismissed their petition rejecting everyone of the contentions urged, and the appellants have come up in appeal after obtaining special leave. It must, however, be mentioned that the argument regarding the constitutional invalidity of the Act and the rules were not repeated before us and the only point arising for consideration is as regards the construction of the notification.

Before proceeding further it would be convenient to set out the grounds on which the learned Judges held that the appellants were not within the benefit of the exemption conferred by the notification. The argument urged on behalf of the State Government as regards the construction of the notification and which was accepted by the learned Judges of the High Court, was briefly this. The exemption from payment of sales tax was granted in order to avoid double taxation i.e., both the excise duty leviable by the Central Government under cl. 3 of the Bill and sales tax to the State Government and it was claimed that this was made out by the terms of the proviso to the notification. In other words, the reasoning was that if the exemption provision contained in the 1st paragraph of the notification was to operate, the goods must have been such that if was liable to the tax under cl. 3(1) of the Bill and that where this condition was not satisfied the exemption provision had no application. It was admitted before the High Court that the textile goods in the possession of

the appellants were not subject to excise duty or the additional excise duty under cl. 3(1) of the Bill. As no excise duty was leviable on these goods there was, of course, no question of the dealer being able to prove to the satisfaction of the assessing authorities under condition 1 of the proviso that additional duties had been levied and collected from him. Another and distinct line of argument was based on the use of the expression "any class of such goods" as distinguished from "any goods" occurring in the proviso and in regard to this the learned Judges observed :

"Textiles fall within the class of such goods in regard to which additional duties could be levied in certain contingencies. It does not mean that only such goods as are actually liable to be taxed by reason of s. 3 of the abovementioned Central Act, that were intended to be covered by the proviso. If that were so, the expression 'any class of such goods' would be unmeaning. In our opinion, that clause only conveys the thought 'goods belonging to the class' in respect of which additional duties could be levied. That expression does not exclude goods set out in the appendix merely because they would not fall within the scope of Section 3 of the central Act."

On these 3 lines of reasoning the learned Judges held that the appellants were not entitled to the benefit of the exemption and in consequence directed the dismissal of the Writ Petition. It is the correctness of this interpretation that is challenged before us.

Mr. Chatterjee, learned counsel for the appellants, submitted that on plain reading of the notification the appellants were entitled to the benefit of the exemption if para I stood alone. This submission has to be accepted and we heard no serious argument against it. The competence of the State Government to grant an exemption, whether qualified or unqualified, not being in dispute, the only question for consideration is whether the effect of the first paragraphs of the notification has been qualified or modified by the rest of the notification including the conditions imposed thereunder. Learned counsel for the respondent relied on the same two lines of reasoning on which the High Court has decided the Writ Petition. He stressed before us in particular the argument based on the use of the words "any class of such goods" in the proviso.

The 1st paragraph of the notification grants an exemption which, if it stood alone, provides that no sales tax would be leviable on and from December 14, 1957 on the sale or purchase of every variety of textiles. This, however, is subject to a proviso which undoubtedly cuts into and restricts the operation of the exemption clause and we have to determine the extent of the restriction of the area carved out. A plain and prima facie reading of the proviso without going into the distinction between goods & "class of goods" would appear to show that an exception is made in cases where additional duties of excise are "leviable" by the Central Government under cl. 3 of the Bill. In such cases the conditions which follow the proviso have to be satisfied, viz., that the additional duties of excise have to be proved to have been paid by the dealer in order to claim the benefit of the exemption. It is now common ground that no additional duty of excise was leviable in respect of the goods in the possession of the appellants and consequently there is no question of the appellants having to prove to the satisfaction of the assessing authorities that such duties has been levied and collected from them. This would be the plain reading of the section. Learned counsel for the respondent, however, repeated before us the argument which found favour with the learned Judges of the High Court based on the interpretation which he sought to place on the words "any class of such goods" in respect of which additional duties are leviable. Now, under cl. 3(1) of the Bill, learned counsel pointed out, additional duties of excise could be levied on cotton fabrics produced or manufactured in India and that it was only by reason of such goods not lying within the precincts of a factory, warehouse etc. but with a dealer, that no such duty became leviable in the case of the

goods with the appellants. The argument was that "textile goods" were "a class of goods" in respect of which an additional duty was leviable, though by reason of their location viz, not being within the precincts of a factory, warehouse etc. no duty could be levied and that consequently unless condition 1 to the proviso was satisfied the exemption could not be claimed. The learned Judges accepted this argument, but with great respect to them, it appears to us that they were in error in doing so. In the first place, "the class of goods" referred to in the proviso to the notification are such that in respect of them duties or excise are leviable. If, therefore, in respect of a class of goods such duties are not leviable because of the situs in which they are lying or are stocked, they would not be the class of goods in respect of which duties of excise are leviable for the essential condition for the proviso to be brought into operation is the liability of the goods to the levy of the additional duty. It therefore appears to us that the expression "class of such goods" has to be understood as being a reference not merely to the goods specified in the opening words of cl. 3(1) of the Bill but to such goods as fall within the entirety of that taxing provision and in respect of which therefore the additional duty would be leviable, for in respect of cotton fabrics produced in India per se or simpliciter no excise duty would be leviable unless they are at the premises which are specified in the latter portion of the cl. 3(1) of the Bill. Both these conditions are necessary to exist before the duty of excise is "leviable" and when the proviso therefore uses the words "any class of such goods" it could only refer to the class of goods named in the 1st para of cl. 3(1) - lying stored or stocked in the places referred to in the concluding portion of the clause.

There is another aspect from which this question of construction could be viewed. It cannot be disputed that the proviso and the conditions appended thereto form an integral part thereof. It is obvious that where the proviso operates it would be open to the dealer affected by it to pay the additional duty and establish that he has paid such duty and thereby entitle himself to the exemption. In other words, it cannot be that the proviso excludes the exemption but in circumstances in which the conditions cannot be fulfilled. The conditions themselves would thus throw light upon the words of the proviso, and when the proviso is read with the conditions of which they are an integral part, the conclusion is inescapable that the word "leviable" used in the proviso means that in respect of the goods specified as regards which he claims exemption from the payment of sales tax there was a liability upon him to pay the additional excise duty under cl. 3 of the Bill for it was only in that event that he would be able to prove to the assessing authorities that that additional duty has been levied and collected from him.

Learned Counsel for the respondent also repeated before us the other line of argument which the High Court accepted viz., that the notification of Government in granting the exemption was to avoid double taxation, viz., of liability to pay both the excise duty as well as the sales tax and that as in the present case the appellants were admittedly not bound to pay the additional excise duty they could make no claim to the benefit of the exemption either. We do not feel persuaded to accept this argument. No doubt, statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, nothing to alter, or nothing to qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning [vide 36 Hals (3rd Edn.) s. 585]. What we are now concerned with is a fiscal provision and it has often been said that there is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made thereunder. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the words of the provision. If the tax-payer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the statute or rule or by necessary implication therefrom, the matter is

different, but that is not the position here. In this connection we might refer to the observations of Lord Watson in *Salomon v. Salomon & Co.* [[1897] A.C. 22. 38.] :

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary intendment."

Learned counsel for the State is possibly right in the submission that the object behind the framers of the notification was to avoid double taxation but the operation of an enactment or of a notification has to be judged not by the object which the legislature or the notifying authority, as the case may be, may have had in mind but by the words which it has employed to effectuate the legislative intent. In the case before us the operative words of the notification are to be found in the 1st paragraph granting the exemption and it was not disputed that the appellants were within that provision. The next question would be as to whether the exemption to which the appellants were manifestly entitled under the 1st paragraph of the notification they have been deprived of by the operation of the proviso. If the proviso on its proper construction, as we have endeavoured to point out earlier, cannot apply to cases where an additional duty of excise is not leviable under cl. 3 of the Bill it would follow that the operation of the exemption is unaffected by the proviso. The appellants were therefore entitled to the relief from sales tax granted by the notification dated December 13, 1957.

In the writ Petition which they filed to the High Court they prayed for a declaration that certain provisions of the Andhra Pradesh Act VI of 1957 were ultra vires the Constitution of Indian. As stated earlier, this point about the constitutional invalidity of the Act was abandoned in this Court and the argument before us was confined wholly to their claim to exemption under the notification.

The appeal is accordingly allowed and the order of the learned Judges dismissing the Writ Petition is set aside. The relief to which the appellant would be entitled would be, having regard to the fact that appellants failed in their attempt to impugn the constitutional validity of the Act etc., a declaration that they are entitled to the benefit of the notification exempting them from the payment of sales tax in respect of textile goods in stock with them on December 14, 1957, and restraining the respondents from levying or collecting sales tax from them in respect of such stock. As the appellants challenged unsuccessfully the constitutional validity of the Sale Tax Act before the High Court we do not consider that the order for costs passed by the learned Judges of the High Court should be interfered with. The appellants, however, will be entitled to costs in this Court.

Appeal allowed.

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