

Rainbow Steels Ltd. Muzaffarnagar and Birla Cotton Spinning and Weaving Mills Ltd., Delhi

Vs

C. S. T., U. P. and State of U. P.

Civil Appeal No. 337 of 1981

(V.D. Tulzapurkar, R.S. Pathak JJ)

30.01.1981

JUDGMENT

TULZAPURKAR, J. –

1. This appeal by special leave raises the question whether on true construction of Entry 15 of the notification No. ST-II-4949/X-10(2)-74 dated May 30, 1975 issued under Section 3-A of U. P. Sales Tax Act, 1948, the negotiated sale of a thermal power plant by appellant 1 to appellant 2 is exigible to sales tax thereunder ?
2. The short facts giving rise to the question may be stated : A thermal power plant at Rampur comprising seven boilers, five turbines together with its associated auxiliaries components and accessories originally belonged to the U. P. State Electricity Board. The Board, after selling it in working condition to appellant 1 on May 29, 1974 for Rs. 41.31 lakhs called upon the latter to pay sales tax thereon which was paid under protest. Appellant '1 used it for generating electricity from may 29, 1974 to September 30, 1975. As the power position improved in the state of U. P. appellant 1 discontinued the generation of electricity through this power plant and finding it expedient to realise its investment negotiated a sale thereof in perfect working condition to appellant 2. Appellant 1 desired to charge sales tax on the aid negotiated sale but appellant 2 informed appellant 1 that it had obtained considered opinion that no sales tax on such a transaction was leviable inasmuch as the sale was not of "old, discarded, unserviceable or obsolete machinery", falling within Entry 15 of the concerned notification dated May 30, 1975. Both the appellants thereupon referred the question for clarification to the Commissioner of Sales Tax, U. P. Lucknow under Section 35 of the U. P. Sales Tax Act, 1948. It was contended on their behalf that the word (adjective) "old" occurring in the entry would take colour from the other words (adjectives) that follow it and the cumulative effect of all the words taken together showed that those words were either synonymous or near synonymous suggesting that the machinery in order to fall within the entry should become non-functional or non-usable and that since the power plant in question had not become "old" in that sense and was in perfect working condition it would not fall within the entry and the sale thereof by appellant 1 to appellant 2 was not exigible to tax. The Commissioner by his order dated February 19, 1977 negatived the contention holding that the four words "old, discarded, had its own meaning and sense and that since the power plant had been used before its sale by appellant 1 to appellant 2 it was old machinery and the sale thereof was liable to tax under the said entry.
3. Feeling aggrieved by that order the appellants preferred an appeal to the Allahabad High Court being F. A. F. O. No. 39 of 1977 and a learned single Judge of the Lucknow Bench of April 18, 1979 dismissed the appeal and confirmed the Commissioner's view that since the concerned power plant had been purchased by appellant 1 long ago and had been put to use it was "old machinery"

within the meaning of the entry, observing the "the degree of oldness has to be greater than recently manufactured machinery used only for some time". The Commissioner view as confirmed by the High Court is challenged by the appellants before us in this appeal.

4. Section 3-A of the U. P. Sales Tax Act, 1948 empowers the State Government to specify the rates of taxes and the point at which the tax can be imposed, subject to a maximum of 12 per cent, on the turnover in respect of the goods specified in the First Schedule to the Act and clause (b) empowers the state Government to amend the entries in the Schedule. In exercise of the aforesaid power the State Government issued the Notification No. ST-II 4949/X-10 (2)-74 dated May 30, 1975 which provided that with effect from June 1, 1975 the turnover in respect of the goods specified in Column II of the Schedule to this Notification shall be liable to tax at the point of sale and at the rate specified respectively in Columns III and IV thereof :

# SCHEDULE 'M' stands for sale by manufacturer in Uttar Pradesh. 'I' stands for sale by the importer in Uttar Pradesh.-----  
--Sl. Point at which Rate ofNo. Description of goods tax shall be tax levied-----  
----- I II III IV-----  
-----15. Old, discarded, unserviceable Sale to 5 per or obsolete  
machinery, consumer cent stores or vehicles including waste products except cinder,  
coal ash and such items as are included in any other notification issued under the  
Act.-----##

The question is whether the negotiated sale of the thermal power plant at Rampur by appellant 1 to appellant 2 falls within the aforesaid entry so as to attract sales tax at 5 per cent on the sale price charged by appellant 1 to appellant 2? In other words the question is whether it is a sale of "old machinery" within the meaning of the entry and what is the true meaning of the expression "old machinery"? It is undisputed that the thermal power plant is question when it was sold by U. P. State Electricity Board to appellant 1 on May 29, 1974 was in perfect running condition and the sales tax on that transaction was paid under protest. It is further undisputed that appellant 1 used that power plant for generating electricity for about a year and four months and because the power position improved in the State of U. P. the appellant 1 negotiated the sale thereof to appellant 2 with the view to realise back its investment and the power plant had been kept in perfect running condition with periodical checks by the Inspector of Factories as also by the Inspector of Boilers and when sold it was in perfect working and running condition. Question is whether such power plant could be regarded as "old machinery" within the meaning of Entry 15.

5. Counsel for the appellants contended that it cold not be regarded as old machinery in the sense that it had become non-functional or non-usable which meaning should be given to the expression 'old' occurring in the entry. In other words, he sought to invoke the principle of noscitur a sociis for construing the expression 'old' because of its association with the other expressions like "discarded, unserviceable or obsolete" which is more general should be restricted to a sense analogous to that of the less general expression, namely, "discarded, unserviceable or obsolete" and read in this manner the sale of the power plant in question cold not be regarded as sale of old machinery falling within the entry. On the other hand counsel for the respondents supported the view taken by the Commissioner of Sales Tax as well as by the High Court, for, according to him the Principle of noscitur a sociis would not apply to the construction of the expression 'old' occurring in the entry. He urged that the fore adjectives have been used disjunctively and each must be given its own separate meaning and pointed out that in two decisions, namely, State of Bombay v. Hospital Mazdoor Sabha the said principle while construing the definition of 'industry' given in Section 2[j]

of Industrial Disputes Act, 1947 and in Section 2[14] of the C. P. and Berar Industrial Disputes Settlement Act, 1947 and in Section 1[14] of the G. P. and Berar Industrial Disputes Settlement Act, 1947 respectively, and that in *Letang v. Cooper* Diplock, L. J., has observed thus : "The maxim *noscitur a sociis* is always a treacherous one unless you know the *societas* to which the *socii* belong." According to him further the *eiusdem generis* principle would be clearly inapplicable inasmuch as it was not a case where some general words follow any particular, generic or specific words.

6. Having given our anxious consideration to the rival contentions urged before us, we are clearly of the view that the principle of *noscitur a sociis* is clearly applicable to the construction of the expression 'old' occurring in Entry 15, and that expression will have to be given a restricted meaning - a sense analogous to that of the less general words clubbed with it. The principle is explained in Maxwell on the INTERPRETATION OF STATUTES [12th Edn.] at page 289 thus :

Where two or more words which are susceptible of analogous meaning are coupled together, *noscitur a sociis*, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.

Moreover, even in the two decisions relied upon by counsel for the respondents where this court refused to apply the principle of *noscitur a sociis* while construing the definition of 'industry' in the two concerned enactments because the legislature had deliberately used wider words in order to make the scope of defined word correspondingly wider, the court has observed that "it is only when the intention of the legislature in associating wider words with words of narrower significance is doubtful or is otherwise not clear that the present rule of construction can be usefully applied." In other words, if the wider words used are in themselves vague, imprecise or ambiguous and there is no indication that these have been deliberately used to infuse wider meaning then this rule of construction can be invoked.

7. Dealing with the entry in question, in the first place it cannot be disputed that the four adjective which are susceptible to analogous meaning are clubbed together while qualifying 'machinery' in the entry. Secondly, it cannot be disputed that the first adjective 'old' is clearly more general than the other three and as a such all the four would take their colour from each other, the meaning of the more general adjective 'Old' being restricted to a sense analogous to that of the less general, namely, "discarded, unserviceable or obsolete". Thirdly, it is true that all the four adjectives which qualify the word 'machinery' have been used disjunctively but it is precisely for that reason that the adjective 'old' becomes vague, imprecise and ambiguous, being too general. The adjective 'old' by becomes vague, imprecise and ambiguous for there is no indication as to how much old the machinery should be before it could be described as 'old' five years old or even ten years old, [the degree of even ten years old, [the degree of oldness being a relative concept] and which one is intended to be included in the entry has not been made clear at all. And lastly, there is another in the entry to indicate that the adjective 'old' has been deliberately used in a wider sense. In the absence of any indication to that effect and when the expression 'old' is by itself vague, imprecise, and ambiguous, being too general, the principle of *noscitur a sociis* will have to be applied i. e. all the associated words will take colour from each other, the meaning of the more general adjective viz.'old' being restricted to a sense analogous to the less general adjectives "discarded, unserviceable or obsolete". In other words in order to fall within the expression 'old machinery' occurring in the entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable. In our view, therefore, on true construction the sale of the thermal power plant which at the

time of sale by appellant 1 to appellant 2 was in perfect running condition and which was sold as such would not fall within the aforesaid Entry 15 of the concerned notification dated may 30, 1975.

8. The English decision of the Court of Appeal in *Letang v. Cooper* relied upon by counsel for the respondents is clearly distinguishable inasmuch as it dealt with a statute which referred to "negligence, nuisance or breach of duty [whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision]," and when it was argued that because the cause of action in both nuisance and negligence included the infliction of actual damage as an essential element, "breach of duty" should also be understood as confined to causes of action in which actual damage was likewise essential the said contention was rejected by Diplock, L. J., by observing thus :

It is clear, however, that 'breach of duty' cannot be restricted to those giving rise to cause of action in which the infliction of actual damage is an essential element, for the words in parenthesis expressly extend to a duty which exists by virtue of a contract and the infliction of actual damage is not an essential element in an action for breach of contractual duty.

In other words, it was a case of a statute there the parenthetical portion occurring therein expressly indicated the contrary intention - contrary to the contention urged and, therefore, the principle of *noscitur a sociis* was not applied.

9. In the result the appeal is allowed and the view of the lower authorities is set aside and the sale in question is declared to be not exigible to tax under Entry 15 of the concerned Notification dated May 30, 1975. In the circumstance, there will be no order as to costs.

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