SUPREME COURT OF INDIA

Indian Aluminium Company Ltd.

Vs.

Asstt. Commissioner of Commercial Taxes (Apeals)

C.A.No.3697 of 2000

(B.N. Kirpal and Ruma Pal JJ.)

17.01.2001

JUDGMENT

B.N. Kirpal, J.

1. The common question which arises for consideration in these cases relates to the interpretation of an entry in the *Karnataka Tax on Entry of Goods Act, 1979* (for short "the Act") in so far it relates to furnace oil.

2. In the three sets of cases, there are different periods of assessment which are involved. In the case of Indian Aluminium Company Ltd. Civil Appeal Nos. 1896-1899/1997 and 1900-1903/1997, the two parties in question are 1982-85 and 1986-89. In the case of M/s. Vikrant Tyres Limited, Civil Appeal No. 3697/2000, the period involved is 1992-93. In case of M/s. Graphite India Limited, Civil Appeal No. 3696/2000, we are concerned with the period post-1998.

3. Under Section 3 of the aforesaid Act, tax on entry of goods specified in the First Schedule into a local area for consumption, use or sale therein can be levied at the rates specified by the State Government by notification. It is common ground that prior to amendment of the Act in 1992, there was one Schedule which specified the various items on which entry tax could be levied. Entry No. 11 of the said Schedule was as follows:

> "All petroleum products, that is to say, petrol, diesel, crude oil, lubricating oil, transformer oil, brake clutch fluid, bitumin (asphalt) tar and others but excluding LP kerosene and naphtha for use in the manufacture of fertilizers."

4. When tax was sought to be levied on M/s. Indian Aluminium Company Ltd. on entry of furnace oil, a writ petition was filed in the Karnataka High Court in which it was, *inter alia*, contended that the aforesaid entry did not permit levy of tax on furnace oil which was brought into Karnataka by the said assessee. The State of Karnataka took the stand before the Single Judge that furnace oil was lubricating oil and, therefore, covered by Entry No. 11.

By order dated 28th January, 1992, the learned Single Judge came to the conclusion that furnace oil was not lubricating oil and, therefore, no tax could be levied on the said furnace oil which was brought into Karnataka.

5. An appeal was filed against the aforesaid decision before the Division Bench but during the pendency of the same by an Amendment Act of 1992, the Act was amended. Instead of one Schedule, the Amending Act provided for two Schedules. The First Schedule contained 102 item on which entry tax could be levied under Section 3(1). Item No. 103 in the First Schedule was a residuary item which enabled the imposition of tax on "goods other than those specified in any of the entries in this Schedule, but excluding those specified in the Second Schedule." The Second Schedule which was inserted by virtue of the said Amending Act contained a list of items on which tax was not leviable. In the First Schedule, Entry No. 67, corresponding to the earlier Entry No. 11, reads as follows:

> "Petroleum products; that is to say;l petrol, diesel, crude oil, lubricating oil, transformer oil, brake or clutch fluid, bitumen (asphalt), tar and others, but excluding aviation fuel, liquid petroleum gas (LPG), kerosene and naphtha for use in the manufacture of fertilizers."

6. On 30th March, 1994, in exercise of the powers conferred by sub-section (1) of Section 3, the Government of Karnataka by a notification specified different rates of tax in respect of entry of goods into Karnataka. Items 4 and 5, whcih are relevant in the present cases, whcih were inserted by reason of the said Notification were as follow s:

> "4. Petroleum products, that is to say Petrol, Diesel, Crude Oil, Lubricating Oil, Transformer Oil, Brake or Clutch fluid, Bitumen (asphalt), Tar and others but excluding Liquid Petroleum Gas (LPG), Kerosene and Naphta for use in the manufacture of fertilizers. ...2%
>
> 5. Furnace oil. ..2% “

7. On 28th JUne, 1996, the Division Bench of the Karnataka High Court allowed the appeal of the State and set aside the decision of the Single Judge. The Division Bench came to the conclusion that the aforesaid original Entry No. 11 and the corresponding Entry No. 67 of the First Schedule after amendment in 1992 contemplated the inclusion of furnace oil in the said Entry and, therefore, tax could be levied thereon. In these appeals, the challenge is to the said decision.

8. Learned counsel for the appellants have contended that use of the words "that is to say" both in original Entry No. 11 and in the new Entry No. 67 clearly indicated that the items mentioned therein were exhaustive. They further submit that neither of these entries mentioned furnace oil. It is contended by them but the words "and others" occurring in the said entries only qualify the word "tar" whcih precedes the said words and, therefore, furnace oil could not be brought under the category of "and others". Reliance is also placed on the Notification dated 30th March, 1994 whereby in the Table providing for the rates of tax a

specified entry of furnace oil was inserted. It was contended that in the case of ambiguity it is possible for the Court to look at the subsequent legislation in order to find out the legislative intent.

9. There can be no doubt that these entries, namely, original Entry No. 11 and the new Entry No. 67 were exhaustive. Learned counsel for the appellants are, therefore, right in contending as such. We, however, do not find any ambiguity in interpreting the said entries and, therefore, for this purpose it is not necessary for the Court to be influenced by the Notification of 30th March, 1994, the issuance of whcih can be easily explained.

10. Both these entries (Nos. 11 and 67) mention "petroleum products": Whereas in Entry No. 11 the first words are "All Petroleum products", the word "All" is missing in the Entry No. 67. This, however, will not make any material difference because petroleum products would clearly mean any type of petroleum product. The use of the words "and others" would, in our opinion, refers to petroleum products other than those which are specifically mentioned therein. What is, however, important is that the said entries specifically exclude aviations fuel, liquid petroleum gas, kerosene and Naphta for use in the manufacture of fertilizers. If the contention of the learned counsel for the appellants is correct tht the words "and others" would not enable the inclusion of furnace oil in the said entries, then on the same parity of reasoning aviation fuel, liquid petroleum gas, kerosene and naphta would also have to be regarded as not being included in the said entries and if this is so there was no need for their specific exclusion. The very fact that there is an exclusion clause, mean that but for the said execution, aviation fuel, LPG, etc. would be included in the said entries and as they are not specifically mentioned they would be covered by reason of the words "and others".

11. The said entries further show that the legislature never intended toe exclude furnace oil from the levy of entry tax. Had the intention of the legislature been to exclude furnace oil, which admittedly is a petroleum product, then such an exclusion would have been indicated in the said entry itself as has been done in the case of aviation fuel, LPG, kerosene and naphtha for use in the manufacture of fertilizers. The aforesaid entries are clear and unambiguous and clearly indicate the taxability of any type of petroleum product except those which are specifically excluded by the said entries.

12. Coming to the Notification of 30th March, 1994, it is quite obvious that as on that day the judgment of the Single Judge in Indian Aluminium Co.'s case held the field and as a result thereof the State was unable to impose entry tax on the import of furnace oil into the State. The only way by which this could have been done, pending the outcome of the letters patent appeal, was to make a specific provision which it did by the said Notification of 30th March, 1994. The entries being clear, the subsequent Notification of 30th March, 1994, cannot be invoked for the purpose of creating ambiguity where none exists.

13. For the aforesaid reasons, we are of the opinion that there is no merit in these appeals. The same are, accordingly, dismissed.
Appeals dismissed.