

SUPREME COURT OF INDIA

Orient Traders

Vs.

Commercial Tax Officer, Tirupati

C.A.No.4491 of 2002

(Ashok Bhan and Dalveer Bhandari)

12.03.2008

JUDGMENT

Ashokbhan, J.

With Civil Appeal Nos. 4492 of 2002, 4493 of 2002 and 4494 of 2002

1. This judgment shall dispose of Civil Appeal No. 4491 of 2002 filed against a detailed order by which the High Court has dismissed the Writ Petition filed by the appellant and the three connected appeals which have been filed by the Assesseees against the dismissal of their writ petitions by the High Court following the impugned Order in Civil Appeal No. 4491 of 2002.

2. Facts are taken from Civil Appeal No. 4491 of 2002, which is the main appeal.

3. The relevant period is from November, 1994 to March, 1995 which falls in the Assessment Year 1994-95. The appellant deals in the sale of silver bars. It filed its return showing a turnover of Rs.14,33,01,470/- and paid sales tax at the rate of =%. The Assessing Authority accepted the said return and completed the assessment on 27.11.1995. Later, the Assessing Officer issued notice on 17.8.1996 proposing to reopen the assessment under Section 14(4)(c) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") and bring the above turnover to tax at the rate of 2%, apart from additional tax and surcharge, on the premise that G.O. Ms No. 1092 and G.O. Ms No. 252 reducing the rate of sales tax to =% were applicable only to gold bullion and the same were not applicable to silver bullion and specie. Questioning the said show cause notice, the appellant filed W.P. No. 21503 of 1996. The High Court dismissed the writ petition on the ground of alternate remedy of filing the objection and getting a decision from the authorities under the Act on merits. The appellant

thereafter filed objections claiming that the reduced rate of sales tax under the G.O. was applicable not only to gold bullion but also to silver bullion. That the bracketed words "gold" used in the above G.O. applies only to specie and not to bullion. The Assessing Officer rejected the contention of the assessee and framed the re-assessment. Questioning the said re-assessment, the appellant filed Writ Petition No. 1727 of 1997 which has been dismissed by the impugned order.

4. It was stated in the writ petition that though a remedy of appeal was available, but the said remedy by way of appeal would not be effective in the light of the clarification issued by the Commissioner of Commercial Tax by his order dated 22.3.1995, clarifying that the G.O.Ms No. 1092 is applicable only to the gold bullion and not to silver bullion. It was also contended that the issue relates only to the interpretation of G.Os., therefore, to have effective and binding decision the appellant has approached the High Court by filing the writ petition. The said writ petition was entertained. It has been dismissed on merits.

5. It is not in dispute that the appellant is a dealer in silver bullion. Under Item-20 of the First Schedule to the Act the original rate prescribed is 2%. However, the State Government issued Notification under Section 9(1) of the Act in G.O.Ms. No. 1092 dated 31.10.1994 reducing the rate of sales tax to =% in respect of 'bullion and specie (gold)' from the date of the said Notification. In order to appreciate the controversy in issue, it would be necessary to refer to the Entry in the First Schedule to the Act as well as the Notification issued on 31.10.1994. Entry 20 in First Schedule to the Act reads:-

FIRST SCHEDULE

Sl.No. Description of goods Point of levy Rate of tax Effective from 20 Bullion and specie (1020) At the point of first sale in the State 8-7-1983-1-4-1995

6. The expression 'bullion' in Entries 20 and 21 has been defined in Explanation I to the First Schedule which reads:-

"Explanation-1:--The expression 'bullion' in items 20 and 21 means pure gold or silver and includes gold or silver mixed with copper, lead or any other kind of base metal."

7. The relevant portion of G.O.Ms. No. 1092 Rev. (CT-II) dated 31-10-1994 is extracted hereunder:-

"Notification-I

In exercise of the powers conferred by the sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act-VI of 1957), the Governor of Andhra Pradesh hereby directs:

(a) that the tax leviable under the said Act on the sale of bullion and specie (gold) be reduced from 2% to 1/2 %, all included (net 1/2%);

(b) that the tax leviable under the said Act on the sale of jewellery, including those set with precious stones be reduced to 2%;

(c) that the tax leviable under the said Act on the sale of precious stones loose, other than pearls, be reduced to 2%. This notification shall come into force with immediate effect."(Emphasis supplied)"

8. The subsequent Notification issued u/s. 9(1) dated 19.5.1995 which came into force with effect from 1.4.1995 and the Notification subsequent thereto in G.O.Ms No. 625 dated 31.7.1996 superseding the earlier Notification omitting the expression 'gold' (G.O.Ms. Nos. 1092 and 252 of 1995) occurring in the bracket, are not reproduced as the same are not relevant for the purposes of disposing of the present appeals.

9. Learned counsel for the appellant contends that the perusal of G.Os. issued by the State of Andhra Pradesh clearly shows that the bracketed word 'gold' occurs only after 'specie' and not either before or after 'bullion'. Therefore, the said bracketed word 'gold' is relevant for the word 'specie' only and not for the word 'bullion'. If the G.O. is so interpreted, the reduced rate of sales tax would be available to the appellant at =% as provided therein, which was accepted by the Assessing Officer at the first instance. That there was no reason for the Assessing Officer to change his opinion to revise the assessment levying the sales tax at higher rate. Relying upon the G.O. Ms. No. 625, dated 31.7.1996 which omitted the expression 'gold' from the bracket immediately after the term 'specie', it was contended that the Government did not intend to give the benefit of lower rate of tax only to gold but also to silver bullion. The action of the respondent-authorities in re-opening the assessment as well as framing the reassessment is not in accordance with law and is only a change of opinion with reference to the Notification issued by the Government under Section 9(1) of the Act. It was also contended that the Notification was clear and unambiguous and the benefit granted in the Notification would be available to the dealers dealing in silver bullion as well. If the G.Os. are interpreted in this manner, then no case was made out to revise the assessment to levy the higher rate of tax. Reliance was placed on a decision of this Court in *Commissioner of Sales Tax V. Industrial Coal Enterprises'*,

10. As against this, the learned counsel appearing for the Revenue submits that there is no justification to contend that the term 'gold' is applicable only to specie and not to bullion. According to him, the interpretation sought to be put by the appellant to the G.O. is not proper and correct. It is submitted that 'bullion and specie' is one single phrase and they cannot be bifurcated. The intention of the Government in the said G.O. was to apply the reduced rate of tax to gold bullion and specie only. As these two words constitute one single phrase the word 'gold' was bracketed at the end to indicate that it is meant to be applicable to gold only. It was also submitted that Commissioner of Commercial Tax, Government of Andhra Pradesh by its order dated 22.3.1995 passed on a request made by the Twin Cities Jewelers Association clarified that the reduced rate of tax is applicable only to gold bullion and specie. As such the contention of the appellant that it is also applicable to silver bullion is unjustified and untenable.

11. Learned counsel for the parties has been heard at length.

12. Bullion and specie are taxable at the rate of 2% with effect from 8.7.1983 under item 20 of the First Schedule of the Act. Same rate is applicable to the articles and jewellery mentioned under Entry 21 made out of bullion and/or specie or both, excluding precious stones. Explanation I to the said Schedule defines bullion as pure gold or silver and includes gold or silver mixed with copper, lead or any other kind of base metal. The Government of Andhra Pradesh by issuing G.O. Ms. No. 1092 dated 31st October, 1994 under Section 9(1) of the Act reduced the net rate of sales tax to =% on sale of bullion and specie (gold). Andhra Pradesh General Sales Tax Act was amended by Act 22 of 1995 with effect from 1st April, 1995 prescribing the sales tax in the case of bullion and specie at the rate of 4%. Again the Government issued a Notification under Section 9(1) of the Act in G.O.Ms. No. 252, dated 19.5.1995 reducing the rate of sales tax in the case of bullion and specie (gold) to =% with effect from 1.4.1995. Subsequent G.O.Ms No. 625 dated 31.7.1996 was issued by the State of Andhra Pradesh omitting the expression 'gold' in the bracket immediately after the term 'gold and specie' occurring in G.O.Ms Nos. 1092 of 1994 and 252 of 1995.

13. This Court in the case of Deputy Commissioner of Sales Tax v. M/s. G.S. Pai and Co., 1980 (1) SCC 142, considered the terms 'bullion and specie', in a different context i.e., whether ornaments and other articles of gold could be regarded as bullion and specie as specified in Entry 56 of the First Schedule of the Kerala General Sales Tax Act, 1963. This Court held in para 3 as under:-

"We will first consider the question whether the ornaments and other articles of gold purchased by the assessee fall within the description of "Bullion and specie" given in Entry 56. There are two expressions in this Entry which

require consideration; one is "bullion" and the other is "specie". Now there is one cardinal rule of interpretation which has always to be borne in mind while interpreting entries in sales tax legislation and it is that the words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. We must give the words used by the Legislature their popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". The word "bullion" must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with this commodity would ascribe to it. Now it is obvious that "bullion" in its popular sense cannot include ornaments or other articles of gold. "Bullion" according to its plain ordinary meaning means gold or silver in the mass. It connotes gold or silver regarded as raw material and it may be either in the form of raw gold or silver or ingots or bars of gold or silver. The Shorter Oxford Dictionary gives the meaning of "bullion" as "gold or silver in the lump; also applied to coined or manufactured gold or silver considered as raw material." So also in Jowitt's Dictionary of English Law and Wharton's Law Lexicon we find that the following meaning is given for the word "bullion": "uncoined gold and silver in the mass. These metals are called so, either when melted from the native ore and not perfectly refined, or where they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness". It would, therefore, be seen that ornaments and other articles of gold cannot be regarded as "bullion" because, even if old and antiquated, they are not raw or unwrought gold or gold in the mass, but they represent manufactured or finished products of gold. Nor do they come within the meaning of the expression "specie". The word "specie" has a recognized meaning and according to Webster's New World Dictionary, it means "coin, as distinguished from paper money". The Law Dictionaries also give the same meaning. Wharton's Law Lexicon and Jowitt's Dictionary of English Law state the meaning of "specie" as "metallic money" and in Black's Law Dictionary, it is described as "coin of the precious metals, of a certain weight and fineness, and bearing the stamp of the Government, denoting its value as currency" while "Words and Phrases Permanent Edition-Vol. 39A" also gives the same meaning. Therefore, according to common parlance, the word "specie" means any metallic coin which is used as currency and if that be the true meaning, it is obvious that ornaments and other articles of gold cannot be described as "specie".

14. From the reading of the above judgment, it is clear that 'bullion' means gold or silver in mass, in bars, plates etc., in uncoined form; whereas 'specie' means coined gold or silver or any other metal and also used as currency. The distinction between

the two expressions is that the former refers to gold and silver when it is in bulk form, either unshaped or shaped like bars, plates etc., whereas later refers to the coined form of silver or gold.

15. Entry 20 of the First Schedule refers to levy of the tax at the point of first sale on bullion and specie. Explanation I under the First Schedule provides the meaning of the expression 'bullion' as pure gold or silver and includes gold or silver mixed with copper, lead or any other kind of base metal. While issuing Notification No. 1092 dated 31.10.1994, the rate of tax was reduced on the sale of bullion and specie (gold) from 2% to =% net. The Legislature used the term 'gold' in bracket after expression 'bullion and specie' thereby making its intention clear that it wanted to restrict the benefit of reduced rate of tax to gold bullion and specie only. Had the intention been to extend the benefit of reduced rate of tax to silver bullion and specie, then, there was no need to put the word 'gold' in brackets after 'bullion and specie'.

16. Contention that the word 'gold' is referable to specie only as it finds mention after the word 'specie', cannot be accepted. "Bullion and specie" is one single phrase and the same cannot be bifurcated, as contended by the counsel for the appellant. The intention of the Government in putting the word 'gold' in the bracket after the words 'bullion and specie' clearly shows that the intention of the Government was to extend the benefit of reduced rate of tax to gold bullion and gold specie only and not to silver. The word 'gold' was put in brackets to indicate that the concessional rate of tax is applicable only to the gold in either of the two forms i.e. bullion or specie.

17. Contention of the learned counsel for the appellant that bracketed word 'gold' contained in Clause (a) of G.O.Ms No. 1092 dated 31.10.1994 and G.O.Ms No. 252 dated 19.05.1995 having been omitted by G.O.Ms No. 625 dated 31.07.1996 clearly shows that the intention of the Legislature was that the concessional rate of tax is to be applied to both gold and silver bullion species for the period in question, cannot be accepted. G.O.Ms No.625 dated 31.07.1996 has been made effective from 01.08.1996. The relevant period in the present appeals is from 01.11.1994 to 31.03.1995. Hence, the appellant cannot take any benefit of omission of the word 'gold' in brackets for the period in question as the G.O.Ms No. 625 dated 31.07.1996 is to take effect from 01.08.1996.

18. It is well established principle that the exemption notifications are to be construed strictly, reference may be made to *State of Jharkhand & Others V. Tata Cummins Ltd., and another*², and *Kartar Rolling Mills V. Commissioner of Central Excise, New Delhi*³, If the intention of the legislature is clear and unambiguous, then it is not open to the courts to add words in the exemption notification to extend the benefit to other items which do not find mention in the notification. In the present case, there is no

ambiguity in the expression used in the G.O. The intention of the State Government is clear that only gold bullion and specie is entitled to the concessional rate of tax. Under the circumstances, the same cannot be extended to the silver as claimed by the assessee.

19. For the reasons stated above, we do not find any merit in these appeals and dismiss the same with costs.

Judgment Referred.

¹(1999) 2 SCC 0607

²(2006) 4 SCC 0057

³(2006) 4 SCC 0772