Government Of India & Ors vs Indian Tobacco Association on 23 August, 2005

Equivalent citations: 2005 (7) SCC 396, AIR 2005 SUPREME COURT 3685, 2005 AIR SCW 4058, 2005 (6) SCALE 683, (2005) 7 JT 568 (SC), 2005 (8) SRJ 297, 2005 (7) SLT 268, 2005 (126) ECR 11 +, (2005) 187 ELT 162, (2005) 126 ECR 11, (2005) 6 SCJ 629, (2005) 5 SUPREME 800, (2005) 6 SCALE 683

Author: S.B. Sinha

Bench: S.B. Sinha, Ar. Lakshmanan

CASE NO.:
Appeal (civil) 5196 of 2005

PETITIONER:
Government of India & Ors.

RESPONDENT:
Indian Tobacco Association

DATE OF JUDGMENT: 23/08/2005

BENCH:
S.B. Sinha & Dr. AR. Lakshmanan

JUDGMENT:

J U D G M E N T [Arising out of SLP (Civil) No.15844 of 2004] S.B. SINHA, J :

Leave granted.

Interpretation of the expression "substitute" falls for determination in this appeal which arises out of a judgment and order dated 30.01.2004 passed by a Division Bench of the Andhra Pradesh High Court in Writ Petition No.21674 of 2002.

Shorn of all unnecessary details, the fact of the matter is as under :

The Respondent herein is an Association of the cultivators of tobacco. An incentive scheme was introduced by the Government of India in the year 1997 as regard export and import in terms of the Duty Entitlement Pass Book Scheme, whereby and whereunder 2% incentive was provided out of the export carried from the notified container depots. 'Guntur' was not mentioned in the notification dated 7.4.1997 issued pursuant to or in furtherance of the said policy decision which came into force with effect from 1.4.1997. In terms of the said notification exemption was granted

from payment of additional duty leviable under Section 3 of the Customs Tariff Act to those who had been issued a Duty Entitlement Pass Book by the Licensing Authority. Sub-clause (iv) of Clause (2) of the said notification states :

"(iv) The said Duty Entitlement Pass Book shall be valid for twelve months from the date of issue, for import and export only, at the port of registration which shall be one of the sea ports at Mumbai, Calcutta, Cochin, Kandla, Mangalore, Marmgoa, Chennai Nhava Sheva, Paradeep, Tuticorin and Visakhapatnam, or any of the airports at Ahmedabad, Bangalore, Mumbai, Calcutta, Coimbatore, Delhi, Jaipur, Varanasi, Srinagar, Trivendrum, Hyderabad and Chennai or any of the Inalnd Container Depots at Bangalore, Coimbatore, Delhi, Gauhati, Kanpur, Pimpri (Pune), Pitampur (Indore), Moradabad, Ludhiana and Hyderabad.

Provided that the Commissioner of Customs may by special order and subject to such conditions as may be specified by him, permit imports and exports from any other sea port, airport, inland container depot or through a land customs stations;"

Indisputably upon representation made by the Respondent- Association, an amendment to the said notification was made on or about 27.11.1997, the relevant portion whereof is as under :

"(a) for the words "Tuticorin and Vishakhapatnam", the words "Tuticorin, Vishakapatnam and Kakinada" shall be substituted; and "

(b) for the words "Ludhiana and Hyderabad", the words "Ludhiana, Hyderabad, Nagpur, Agra, Faridabad, Jaipur, Guntur and Varanasi" shall be substituted."

The Respondent made a representation before the appropriate authority to the effect that the said notification dated 27.11.1997 would also cover the period from 7.4.1997 to 27.11.1997 being clarificatory in nature. The Central Government, however, rejected the said representation made by the Respondent in terms of its letter dated 23.8.2001, stating :

"3. Therefore, exports of tobacco made during the period 1.4.97 to 26.11.97 cannot qualify for DEPB Scheme because it would mean granting retrospective effect to the said customs Notification which is not permitted in law.

4. In this regard, I would also like to draw your attention to the letter of even number dated 10.1.2000 of my predecessor wherein similar views were expressed."

A writ petition was filed by the Respondents herein questioning the said order before the Andhra Pradesh High Court. The same was allowed by reason of the impugned judgment, holding :

" In the said notification the place Guntur was not included and subsequently by an amendment to the said notification condition (iv) was amended and the place of

> Guntur was introduced by way of substitution. The word substitution would connote that the Government intended to give benefit to the imports and exports from Guntur and if really the Government wanted to introduce and give benefit to the imports and exports from Guntur from 27.11.1997 they could have issued a separate notification which would operate as prospective in nature, but the notification dated 27.11.1997 was only by way of substitution. Since the legislature intended to give retrospective benefit to the exports and imports from Guntur, the said notification dated 27.11.1997 was issued by substitution ."

Mr. B. Dutta, the learned Additional Solicitor General appearing on behalf of the Appellant(s), would submit that the notifications dated 7.4.1997 and 27.11.1997 providing for exemption from payment of additional custom duty must be strictly construed. Relying on Commissioner of Central Excise, Chandigarh-I vs. Mahaan Dairies [(2004) 11 SCC 798], the learned counsel would contend that a subordinate legislation containing exemption from payment of duty would only have a prospective operation.

Mr. L. Nageshwar Rao, the learned Senior Counsel appearing on behalf of the Respondent, on the other hand, would urge that by reason of the import policy for the period 1997-2002, the Union of India only sought to simplify the procedure for grant of exemption basing the same on the quality of goods exported on freight on board and as Guntur Railway Station had all along been an Inland Container Depot; there was no reason as to why the said place should have been excluded from the purview of the aforementioned notification.

The learned counsel would contend that having regard to the representation made by the Respondent-Association, the Ministry of Commerce, Director General of Foreign Trade in the Tobacoo Board had requested the Ministry of Finance to pass appropriate orders so as to enable the exporters of Inland Container Depot, Guntur to avail the facilities of DEPB Scheme. It was submitted that in relation to the exporters of embroidered silk garments, made-ups and fabrics, the Government had given the benefit with retrospective effect, as would appear from the letter of Ministry of Finance dated 20.12.2001.

An exemption notification, it is trite, must be construed having regard to the object and purport which the same seeks to achieve.

It is also well-settled that an expression used in a statute should be given its ordinary meaning unless it leads to an anomalous or absurd situation.

In Mahaan Dairies (supra), a Division Bench of this Court observed :

> "8. It is settled law that in order to claim benefit of a Notification a party must strictly comply with the terms of the Notification. If on wordings of the Notification the benefit is not available then by stretching the words of the Notification or by adding words to the Notification benefit cannot be conferred..."

A similar view has been expressed by a Division Bench of this Court in Tata Iron & Steel Co. Ltd. vs. State of Jharkhand and Others [(2005) 4 SCC 272], in which one of us was a party, stating :

> "42. Eligibility clause, it is well settled, in relation to exemption notification must be given a strict meaning."

However, the question which arises for consideration in this case is as to what would be the effect of the subsequent notification.

The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing". or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".

By reason of the aforementioned amendment no substantive right has been taken away nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby.

There cannot furthermore be any doubt whatsoever that when a person is held to be eligible to obtain the benefits of an exemption notification, the same should be liberally construed.

The notification dated 7.4.1997 is an exemption notification whereby and whereunder the export and import policy of the Union of India was implemented. Exemption from payment of additional duty leviable under Section 3 of the Customs Tariff Act, was to be granted to an exporter, provided he possessed a Duty Entitlement Pass Book which was valid at the ports of registration specified therein.

The proviso appended to sub-clause (iv) of clause (2) of the notification dated 7.4.1997 empowers the Commissioner of Customs to permit imports and exports from any other seaport, airport, inland container depot or through a land customs station.

The Commissioner of Customs has advisedly not exercised its jurisdiction under the proviso appended to sub-clause (iv) of clause (2) of notification dated 7.4.1997. By reason of the notification dated 27.11.1997, the only amendment made was the words "Tuticorin and Vishakhapatnam"

> were substituted by the words "Tuticorin, Vishakhapatnam and Kakinada", which are 'seaports' and the words "Ludhiana and Hyderabad" were substituted by the words "Ludhiana, Hyderabad, Nagpur, Agra, Faridabad, Jaipur, Guntur and Varanasi" which are 'inland container depots'.
>
> It is not in dispute that 'Guntur' was one of the inland container depots. It is also not in dispute that such duty exemption had all along been granted for export from

'Guntur'. In terms of the policy decision, the tobacco exporters had filed blue shipping bills which having not been accepted and they had no option but to file normal white shipping bills, as tobacco was a perishable item.

Had the intention of the Government of India been only to extend the said benefit only to the exporters from any other seaport, airport or inland container depot, recourse to the proviso appended to sub-clause (iv) of clause (2) of the notification dated 7.4.1997 could have been taken. But by reason of the notification dated 27.11.1997, one 'sea port' and 'six inland container depots' have been added. The last two words in the category of seaport, namely, "Tuticorin and Vishakhapatnam" had been substituted by the words "Tuticorin, Vishakhapatnam and Kakinada. Similarly the last two words, namely, Ludhiana and Hyderabad" in the category of inland container depot had been substituted by the words "Ludhiana, Hyderabad, Nagpur, Agra, Faridabad, Jaipur, Guntur and Varanasi. It, therefore, cannot be said to be a case where some other seaports or inland container depots have been added for the purpose of extension of the benefit but the newly added seaports or inland container depots had been made a part of the original notification. The Union of India while making a subordinate legislation had advisedly used the word "substitution" in place of the word "addition". The object and purport of the subsequent notification issued by the Union of India was, thus, to grant the same benefit which had been granted to the exporters who were registered at the other seaports, airports or inland container depots as specified in the notification dated 7.4.1997 but also to those exporters, who had been exporting from such seaports or inland depots as specified in the amended notification dated 27.11.1997.

If the Central Government intended to extend the benefit to the members of the Respondent-Association only with prospective effect, it could have said so explicitly. Such a benefit could also have been extended by taking recourse to the proviso appended to sub-clause (iv) of clause (2) of the notification dated 7.4.1997. It may, therefore, be safely concluded that by reason of the amended notification, the Central Government only intended to rectify a mistake and, thus, the same will have retrospective effect and retroactive operation.

In Ramkanali Colliery of BCCL vs. Workmen by Secy., Rashtriya Colliery Mazdoor Sangh and Another [(2001) 4 SCC 236], a Division Bench of this Court observed :

" What we are concerned with in the present case is the effect of the expression "substituted" used in the context of deletion of sub-sections of Section 14, as was originally enacted. In Bhagat Ram Sharma vs. Union of India, this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view

> there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such."

In Zile Singh vs. State of Haryana & Ors. [(2004) 8 SCC 1] wherein the effect of an amendment in the Haryana Municipal Act, 1973 by Act No.15 of 1994 whereby the word "after" was substituted by the word "upto" fell for consideration; wherein Lahoti, C.J. speaking for a three-Judge Bench held the said amendment to have a retrospective effect being declaratory in nature as thereby obvious absurdity occurring in the first amendment and bring the same in conformity with what the legislature really intended to provide was removed, stating :

> "23. The text of Section 2 of the Second Amendment Act provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"?
>
> 24. The substitution of one text for the other pre- existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.
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> 25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, ibid, p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Association case a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasized the distinction between 'supersession' of a rule arid 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

We are not oblivious of the fact that in certain situations, the court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an

"amendment" having a prospective effect but such a question does not arise in the instant case.

There is another aspect of the matter which may not be lost sight of. Where a statute is passed for the purpose of supplying an obvious omission in a former statute, the subsequent statute relates back to the time when the prior Act was passed [See Attorney General vs. Pougette (1816) 2 Price 381 : 146 ER 130] The doctrine of fairness also is now considered to be a relevant factor for construing a statute. In a case of this nature where the effect of a beneficent statute was sought to be extended keeping in view the fact that the benefit was already availed of by the agriculturalists of tobacco in Guntur, it would be highly unfair if the benefit granted to them is taken away, although the same was meant to be extended to them also. For such purposes the statute need not be given retrospective effect by express words but the intent and object of the legislature in relation thereto can be culled out from the background facts.

The question has furthermore to be considered having regard to the language and object discernible from the statute read as a whole. The Respondents were not ineligible from obtaining the benefit. Once they are held to be eligible for obtaining the benefit, the amended notification being an exemption notification should receive the beneficent construction.

It is not a case where the Respondents, like the cases of Mahaan Dairies (supra) and Tata Iron & Steel Co. Ltd.(supra) were ineligible from claiming the benefit. The subsequent notification, thus, should receive a beneficent construction.

The learned Additional Solicitor General relied upon Collector of Central Excise, Bombay I and Another Vs. M/s. Parle Exports (P) Ltd. [(1989) 1 SCC 345] for raising the contention that the interpretation of the Executive should receive due consideration. It is not a case where the doctrine of 'Contemporanea Expositio' can be invoked. The order relied upon by the learned counsel has been impugned by the Respondents by filing the writ petition. It, therefore, cannot be said that by reason thereof the notification had been constructed on administrative side.

In M/s Parle Exports (supra), it was observed:

> "17 The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India. See also Kailash Nath v. State of U.P. The principle is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage v. Frederick Wilkinson that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at p. 369 of the report that in a taxing Act provisions establishing

> (sic enacting) an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The ratio of the said decision, therefore, runs counter to the submission of the learned counsel.

Reliance was also placed by the learned Additional Solicitor General on H.M. Bags Manufacturer Vs. Collector of Central Excise [(1997) 11 SCC 696] wherein having regard to the use of the expression "henceforth" the order of the Board was held to have a prospective operation. The said decision, therefore, has no application in the present case.

Furthermore, registration at the inland container depot was to remain valid for a period of 12 months only and in that view of the matter too, it cannot be said that the Central Government intended to deprive the Respondents herein who were agriculturists from the benefit of the aforementioned notification dated 7.4.1997 only for a limited period, viz., between 7.4.1997 and 27.11.1997. We, therefore, are of the opinion that the High Court cannot be said to have committed any error in arriving at the aforementioned conclusion.

For the reasons aforementioned, we are of the opinion that the High Court has not committed any error in passing the impugned judgment. The Appeal is dismissed. No costs.