

The State of Gujarat
v.
M/s Ambuja Cement Ltd.
(Civil Appeal No. 7874 of 2024)

02 August 2024

[Abhay S. Oka and Augustine George Masih,* JJ.]

Issue for Consideration

Definition of Purchase Price under sub-Section (18) of Section 2 of the Gujarat Value Added Tax Act, 2003. High Court whether justified in upholding the order passed by the Gujarat Value Added Tax Tribunal wherein it held that the tax and value purchases on which no tax was claimed nor was granted in the assessment could not be included in the aggregate of taxable turnover of purchases within the State of Gujarat for the purpose of reduction of tax credit.

Headnotes[†]

Gujarat Value Added Tax Act, 2003 – ss.2(18), (32), 11(3 (b) – Purchase Price – Turnover of purchases – Tax liability u/s.11(3 (b) – Entitlement to tax credit – Respondent-dealer excluded the amount representing Value Added Tax and value of purchases of which no credit was claimed, while calculating the taxable turnover of its purchases within the State of Gujarat and reduced the taxable turnover by four per cent on the quantity of goods involved in the manufacturing of goods dispatched by way of branch transfer – Correctness:

Held: The calculation of taxable turnover of the purchases and reduction value of purchases on which no tax credit was claimed nor granted, and component of value added tax already paid on purchases, was rightly excluded from the total turnover of the Respondent-dealer while computing his tax liability u/s. 11(3 (b) – Cogent reading of s.2(18), s.2(32) and s.11 lead to only one conclusion that purchase price would not include purchases on which no value added tax was claimed nor granted and the component of value added tax stood already paid on purchases – Thus, the taxable turnover of purchases would have to be calculated after deducting both the components – Definition of Purchase Price u/s.2(18) is enumerative and exhaustive – The use of the word “means” denote the intention of the legislature to restrict the

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scope of the “purchase price” to the categories enumerated in the definition itself – Therefore, the purchase price would be the amount of valuable consideration paid or payable for any purchase which would include amount of duties, levied or leviable under the two Acts (Central Excise Tariff Act, 1985 and the Customs Act, 1962) provided for in this Section apart from the other charges as expounded therein – The scope has been limited to the two Acts mentioned in the Section itself – The same could not be expanded – Thus, the intention of the legislature was to exclude Value Added Tax from the ambit of purchase price as the same is not found mentioned in the categories of tax/duties enumerated thereunder – Order passed by the Tribunal and upheld by the High Court not interfered with. [Paras 18, 17, 15, 19]

Interpretation of Statutes – Taxation statutes – Strict interpretation – Duty of the Court:

Held: The Courts ought to read the statute as it is and if the words therein are clear and unambiguous then only one meaning can be inferred – Courts are bound to give effect to the said meaning irrespective of the consequences so far as the taxation statutes are concerned – Article 265 of the Constitution of India prohibits the State from extracting tax from the citizens without the authority of law – The tax statutes have to be interpreted strictly – Legislature mandates taxing certain persons in certain circumstances which cannot be expanded or interpreted to include those who were not intended or comprehended – The assessee is not to be taxed without clear words and, for that purpose, the same must be according to the natural construction of the words which have been used in that statute – These words have to be read as it is and thus, cannot be added or substituted which may give a meaning other than what is expressed in the provision. [Para 12]

Case Law Cited

Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana [1997] Supp. 4 SCR 626 : 1998 (1) SCC 384; *P. Kasilingam and Others v. P.S.G. College of Technology and Others* [1995] 2 SCR 1061 : (1995) Supp 2 SCC 348 – relied on.

List of Acts

Gujarat Value Added Tax Act, 2003; Central Excise Tariff Act, 1985; Customs Act, 1962; Constitution of India.

Digital Supreme Court Reports**List of Keywords**

Purchase Price; Value added tax; VAT; Gujarat Value Added Tax; GVAT; Value of purchases; Taxable turnover of purchases; Aggregate of taxable turnover of purchases; Entitlement to tax credit; Unclaimed tax credit; Value Added Tax excluded from the ambit of purchase price; Taxation statutes; Strict interpretation; Branch transfer; Taxable turnover reduced.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7874 of 2024

From the Judgment and Order dated 28.04.2016 of the High Court of Gujarat at Ahmedabad in TA No. 353 of 2016

With

Civil Appeal Nos. 7875, 7877 and 7876 of 2024, T.C.(C) Nos. 12-13, 14, 15 and 9-11 of 2019

Appearances for Parties

Ms. Archana Pathak Dave, S Ganesh, Sr. Advs., Ms. Deepanwita Priyanka, Hrishikesh Baruah, Rudraksh Kaushal, Anurag Mishra, Purvish Jitendra Malkan, Alok Kumar, Kush Goel, Ryan Singh, Suraj Pandey, Santosh Krishnan, Uchit Sheth, Ms. Sonam Anand, Ms. Deepshikha Sansanwal, Advs. for the appearing parties.

Judgment / Order of the Supreme Court**Judgment****Augustine George Masih, J.**

1. The Appellant herein is the State of Gujarat which has challenged the judgment passed by the High Court of Gujarat dated 28.04.2016 in an appeal preferred by it which was dismissed affirming the order dated 08.06.2015 of the Gujarat Value Added Tax Tribunal Ahmedabad (hereinafter referred to as 'the Tribunal'), allowing the appeal of Respondent M/s Ambuja Cement, Ltd.
2. The plea taken by the Appellant while challenging the judgments of the High Court and the Tribunal is that the Courts below have erred in holding that Value Added Tax and value of purchases on which no tax credit was claimed nor granted in the assessment, cannot be

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included in the aggregate of taxable turnover of purchases within the State for the purpose of reduction of tax credit under Section 11(3) (b) of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'the GVAT Act').

3. Two substantial questions of law being framed by the High Court were as follows: -

[1] Whether the Hon'ble Tribunal has erred in law and in facts in holding that value added tax paid on purchases is required to be excluded for computing "taxable turnover of purchases" under section 11(3) (b) of the Act?

[2] Whether the Hon'ble Tribunal has erred in law and in facts by holding that purchases on which value added tax is neither claimed nor granted are required to be excluded for computing "taxable turnover of purchases" under section 11(3)(b) of the Act?

4. The learned senior advocate appearing for the Appellant has asserted that the Respondent dealer essentially calculated the taxable turnover of its purchases under the GVAT Act by excluding the Value Added Tax and value of purchases on which no tax credit was claimed and reduced the taxable turnover of purchases by four per cent on the quantity of goods involved in the manufacture of goods dispatched by way of branch transfer as has been provided in Section 11(3)(b) of the GVAT Act. It is asserted that the Courts below have failed to appreciate that the assessing officer had rightly included the amount of Value Added Tax and unclaimed tax credit in the turnover of purchases as defined in Section 2(32) of the GVAT Act.
5. It was further submitted that the legislative intent has been wrongly interpreted to say that it did not intend to include Value Added Tax within the definition of the purchase price as defined under Section 2(18) of the Gujarat Value Added Tax. Section 2(18) which defines the purchase price is not exhaustive and the Value Added Tax should be included in the purchase price for the purpose of calculation of taxable turnover of purchases. Based on these submissions, it is asserted by the learned senior advocate for the Appellant that the judgments passed by the High Court as well as the Tribunal cannot

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be sustained and deserve to be set aside by restoring the orders passed by the assessment authorities being in accordance with the law.

6. On the other hand, learned counsel for the Respondent has asserted that the judgment as passed by the Tribunal which has been approved by the High Court has laid down the correct interpretation of the statutory provisions. Supporting the said judgment, the learned counsel submitted that the purchase price as defined aforesaid does not include the Value Added Tax component, and whatever duties and levies are required to be included in the meaning of purchase price are specifically provided for in the form of two Acts i.e., Central Excise Tariff Act, 1985 and the Customs Act, 1962. Apart from these two taxes which have been specifically referred to and provided for in Section 2(18) of the GVAT Act, no other tax is to be included. Had the legislature intended to include the VAT component in the purchase price, the same could have been expressly provided for in the statute.
7. It is further contended by the learned counsel that the scope of Section (11)(3)(b) of the GVAT Act while computing the taxable turnover of purchases cannot be expanded beyond the provision as provided for under the GVAT Act, supporting the said judgment, therefore, it was prayed for the dismissal of the present appeals.
8. We have considered the submissions made by the learned counsel for the parties and have gone through the provisions, as well as the pleadings.
9. In brief, the facts of the case are that the Respondent dealer as mentioned calculated the taxable turnover of its purchases within the State of Gujarat by excluding the amount representing Value Added Tax and value of purchases of which no credit was claimed. This was asserted to have been done under the provisions of Section 11(3)(b) of the GVAT Act. Accordingly, the taxable turnover was calculated and proportionately reduced by four per cent on the quantity of goods involved in the manufacturing of goods dispatched by way of branch transfer.
10. The Deputy Commissioner during the process of audit assessment determined the taxable turnover of purchases within the State by including the tax amount i.e., Value Added Tax Amount and Value of

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Purchases on which no tax credit was claimed by the Respondent dealer nor proposed to be granted in the assessment. On the basis of this assessment, the Respondent being aggrieved preferred an appeal before the Joint Commissioner which was dismissed leading to the filing of a second appeal before the Gujarat Value Added Tax Tribunal at Ahmedabad wherein the same was partly allowed by holding that the tax and value purchases on which no tax was claimed nor was granted in the assessment could not be included in the aggregate of taxable turnover of purchases within the State for the purpose of reduction of tax credit. The State of Gujarat carried an appeal before the High Court challenging the order passed by the Tribunal which has been dismissed affirming the order of the Tribunal.

11. The issue involved in the present matters revolves around the definition of Purchase Price as provided for under sub-Section (18) of Section 2 of the GVAT Act, which reads as follows: -

2. In this Act, unless the context otherwise requires, -

[* * * * *]

18. “purchase price” means the amount of valuable consideration paid or payable by a person for any purchase made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1983 or the Customs Act, 1962 and any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged and includes, -

(a) in relation to –

- (i) the transfer, otherwise than in pursuance of a contract of property in any goods,
- (ii) the supply of goods by any unincorporated association or body of persons to a member thereof,
- (iii) the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink

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(whether or not intoxicating), the amount of cash, deferred payment or other valuable consideration paid or payable therefor,

- (b) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, such amount as is arrived at by deducting from the amount of valuable consideration paid or payable by a person for the execution of such works contract, the amount representing labour charges for such execution,
- (c) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable by a person for such delivery.

12. On going through the above definition as has been provided for, it would indicate that the same is not only exclusive but exhaustive as well, it can rather be said to be enumerative. The first and foremost duty of the Court is to read the statute as it is and if the words therein are clear and unambiguous then only one meaning can be inferred. The Courts are bound to give effect to the said meaning irrespective of the consequences so far as the taxation statutes are concerned. Article 265 of the Constitution of India, 1950 prohibits the State from extracting tax from the citizens without the authority of law. The tax statutes have to be interpreted strictly which means that the legislature mandates taxing certain persons in certain circumstances which cannot be expanded or interpreted to include those who were not intended or comprehended. The assessee is not to be taxed without clear words and, for that purpose, the same must be according to the natural construction of the words which have been used in that statute. These words have to be read as it is and thus cannot be added or substituted which may give a meaning other than what is expressed in the provision.

13. In the case of [*Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana*](#)¹ this Court held as follows: -

¹ [1997] Supp. 4 SCR 626 : 1998 (1) SCC 384.

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“5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

6. *** what has been specifically left out by the legislature cannot be brought back within the ambit of the charging section by implication or by ascribing an extended meaning to the word “individual” so as to include whatever has been left out.”

14. In the case of P. Kasilingam and Others v. P.S.G. College of Technology and Others² this Court while interpreting the use of expressions in the statute observed as follows:

“19.... The use of the word ‘means’ indicates that “definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition”. (See : *Gough v. Gough* [(1891) 2 QB 665 : 60 LJ QB 726]; *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court* [(1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71] .) The word ‘includes’ when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words “means and includes”, on the other hand, indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions”. (See : *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106 : (1895-9) All ER Rep Ext 1576] (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164, 169 : 1989 SCC (Tax) 56] The use of the words “means and includes” in Rule 2(b) would, therefore, suggest that the definition of ‘college’ is intended to be exhaustive and not extensive and would cover

2 [1995] 2 SCR 1061 : 1995 Supp (2) SCC 348.

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only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time.”

15. In the light of the above reproduced definition as provided for under Section 2(18) of the GVAT Act, it becomes obvious that the definition is enumerative and exhaustive. The use of the word “means” denote the intention of the legislature to restrict the scope of the “purchase price” to the categories enumerated in the definition itself. The purchase price, therefore, would be the amount of valuable consideration paid or payable for any purchase which would include amount of duties, levied or leviable under the two acts as has been provided for in this Section apart from the other charges as expounded therein. The scope has been limited to the two Acts mentioned in the Section itself. The same could not be expanded and therefore it can be safely said that the intention of the legislature was to exclude Value Added Tax from the ambit of purchase price as the same is not found mentioned in the categories of tax/duties enumerated thereunder. Sub-Section (32) of Section 2 of the GVAT Act defines turnover of purchases which reads as follows: -

“2. In this Act, unless the context otherwise requires, -

[* * * * *]

32. “turnover of purchases” means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period.”

16. The above provision makes it amply clear that the purchase price would be the determinative factor for calculating the turnover of

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purchases, as stated above, the purchase price would be restrictive within the domain of Section 2(18). Section 11 of the Gujarat Value Added Tax Act deals with the tax credit. The relevant portion thereof reads as follows:

11.(1)(a) A registered dealer who has purchased the taxable goods (hereinafter referred to as the “purchasing dealer”) shall be entitled to claim tax credit equal to the amount of,-

(i) tax collected from the purchasing dealer by a registered dealer from whom he has purchased such goods or the tax payable by the purchasing dealer to a registered dealer who has sold such goods to him during the tax period, or];

[* * * * *]

(b) The tax credit to be so claimed under this sub-section shall be subject to the provisions of sub-sections (2) to (12); and the tax credit shall be calculated in such manner as may be prescribed.

[* * * * *]

11.(3)(b) Notwithstanding anything contained in this section, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four per cent. on the turnover of purchases-

(i) of taxable goods consigned or dispatched for branch transfer or to his agent outside the State, or

(ii) of goods taxable which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State,

(iii) of fuel used for the manufacture of goods.:]

[Provided that where the rate of tax of the taxable goods consigned or dispatched by a dealer for branch transfer or to his agent outside the State is less than four per cent., then the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the Schedule on such goods on the 34[taxable turnover of purchases with in the State.]

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17. The cogent reading of sub-Section (18) of Section 2 which defines 'purchase price', sub-Section 32 of Section 2 which defines 'turnover of purchases', and Section 11 of the GVAT Act which deals with entitlement to the tax credit, would lead to only one conclusion, that the purchase price would not include purchases on which no value added tax was claimed nor granted and the component of value added tax stood already paid on purchases. Accordingly, the taxable turnover of purchases would have to be calculated after deducting both the components as has been detailed aforesaid.
18. Therefore, the calculation of taxable turnover of the purchases and reduction value of purchases on which no tax credit was claimed nor granted, and component of value added tax already paid on purchases, was rightly excluded from the total turnover of the Respondent dealer while computing his tax liability under Section 11(3)(b) of the GVAT Act.
19. The order passed by the Tribunal as has been upheld vide the impugned judgment of the High Court being in accordance with law calls for no interference and therefore, the appeals deserve dismissal.
20. The appeals, accordingly, stand dismissed.
21. As regards the Transfer Cases which were directed to be heard along with the present Appeals, are allowed in the light of the above Judgment passed in the Appeals.

Result of the case: Appeals dismissed, Transfer Cases allowed.

[†]Headnotes prepared by: Divya Pandey