Supreme Court of India
State Of Jharkhand & Ors vs M/S. La Opala R.G. Ltd on 27 March, 1947
Author: .....J.
Bench: H.L. Dattu, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2240 OF 2006

STATE OF JHARKHAND & ORS. ..APPELLANTS

VERSUS

M/S.LA OPALA R.G. LTD. ..RESPONDENT

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Jharkhand at Ranchi in W.P. [T] No.4572 of 2004, dated 22.06.2005. By the impugned judgment and order, the High Court has set aside the letter issued by the Assistant Commissioner of Commercial Taxes, Deogarh Circle, dated 13.05.2004, whereby the Assessing Authority has rejected the stand of the respondent-dealer that it is eligible to pay reduced rate of tax under the notification S.O. No.25 (for short, "the notification") issued by the Government of Jharkhand, dated 25.06.2001 and directed the respondent-dealer to deposit taxes in relation to inter-State sales at the rate of 4%.

2. The possible construction that could be placed on the aforesaid notification is the subject matter of this appeal.

3. The conspectus of facts is: the respondent-dealer is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 engaged in the manufacture of glass and glassware made of Opal glass. The industrial unit of the respondent-dealer is situated at Madhupur in Deoghar district, Jharkhand.

4. The respondent-dealer is a dealer registered under the provisions of the Bihar Finance Act, 1981 and the Central Sales Tax Act, 1956 ("the Act", for short).

5. The State Government, in exercise of its powers under clause

(b) of sub-section 5 of Section 8 of the Act has issued the notification. Since the construction of the notification is in issue, we deem it appropriate to extract the notification. It reads as under:

"S.O.25, dated the 25th June, 2001 – In exercise of the powers conferred by clause (b) of sub-section (5) of Section 8f of the Central Sales Tax Act, 1956 (Act 74 of 1958) the Governor of Jharkhand is pleased to direct that tax payable under sub-section (1) or (2) of Section 8 of the said Act in respect of Sale of all types of glass and glass sheets in the course of interstate sale or commerce from any place of business in the State of Jharkhand shall be calculated at the rate of three per centum and no statutory form in this regard shall be required.

2. This notification shall come into force with effect from 16th June, 2001."

6. Immediately after issuance of the notification, the respondent-dealer by letter dated 27.05.2002 had informed the authorities under the Act, that, since the respondent-dealer would be covered by the notification, the rate of tax payable on glassware in inter-state sales would be at the reduced rate of 3%. Unfortunately, the authorities did not respond to the request so made by the dealer.

7. Later, the authorities issued a letter dated 09.01.2004 to the respondent manufacturer, inter alia, directing him to deposit the tax in relation to its transactions in respect of the inter-state sales to registered and unregistered dealers at the rate of 4% and 12%, respectively. The respondent was also directed to show-cause as to why a penalty under Sections 16 and 16(9) of the Bihar Finance Act, 1981 and the Act should not be imposed and the respondent not be directed to correct the returns and deposit tax at the rate of 4%, if the sales is effected to registered dealers and at the rate of 12% if the inter-state sale is effected to un-registered dealers.

8. The respondent-dealer had filed its reply, dated 16.01.2004, wherein it took the stand that it was liable to charge and deposit tax at the rate of 3 per cent on sale in the course of inter-state trade in respect of its products; that the returns had been correctly filed and that the tax was validly deposited at the rate of 3 per cent.

9. After the issuance of the aforesaid letter/notice, the authorities by their letter dated 13.05.2004, rejected its stand and informed that the respondent would be liable to pay tax at the rate of 4 per cent on its inter-state sales if made to a registered dealer and at the rate of 12 per cent if made to an unregistered dealer.

10. Further, the respondent-assessee was informed by the authorities that the product manufactured by him is glassware and, therefore, not covered under the notification by letter dated 13.07.2004.

11. The respondent-dealer, being aggrieved by the communications dated 09.01.2004, 13.05.2004 and 13.07.2004 had filed a Writ Petition before the High Court, inter alia, requesting the Court to issue a writ in the nature of certiorari to quash the aforesaid letters and direct the authorities under the Act to extend the benefit of the notification, which has come into force with effect from 16.06.2001.

12. The High Court, after a detailed consideration of the issue before them, has come to the conclusion that the glassware manufactured by the respondent-dealer is a type of glass and therefore, it is entitled to the benefit of reduced rate of tax under the notification and, accordingly,

has quashed the said letters.

13. Being aggrieved by the said order of the Division Bench of the High Court, the State is before us in this appeal.

14. We have heard Shri Jayesh Gaurav, learned counsel for the appellant-State and Shri S.D. Sanjay, learned senior counsel for the respondent-dealer. We have carefully perused the documents on record and the judgment and order impugned herein.

15. Shri Gaurav would submit that the expression "types of glass" as used in the notification would not include the product in question as it is merely a "form of glass". He would provide us with some information in respect of types of glasses being classified into nine types: 1)Soda glass or soda-lime glass,

2)Coloured glass, 3)Plate glass, 4)Safety glass, 5)Laminated glass, 6)Optical glass, 7)Pyrex glass, 8)Photo-chromatic glass, and 9)Lead crystal glass. He would therefore contend that the product, "glassware" not being any of the aforesaid types of glass but another form of glass would not be entitled to benefit of the notification and that the High Court has erred in its conclusion.

16. Per contra, Shri S.D. Sanjay, learned senior counsel would justify the judgment and order passed by the High Court and submit that the products of the respondent-dealer are covered by the notification as "glassware" is the product in which different components are fused together to give glass its final form in accordance with the moulds in which they are manufactured, such as crockery, vases, etc. and therefore, would fall in the category of "types of glass". He would further submit that in taxing statutes, a notification in the nature of granting tax incentives for the promotion of economic growth and development ought to be liberally construed and given a purposive interpretation.

17. As we have indicated earlier, the short point that falls for our consideration and decision in the case is the possible construction that could be placed on the expression "types of glass and glass-sheets" as contained in the notification issued by the State Government in exercise of its powers under Section 8(5)(b) of the Act.

18. It is relevant to notice the contents of the notification issued by the State Government. A dissection of the notification would indicate the following, namely :

a) the Governor of Jharkhand in exercise of his powers under clause

(b) of sub-section (5) of Section 8 of the Act has issued the notification;

b) the notification speaks of reduction of the rate of tax under the Act;

c) the reduced rate of tax is from 4% to 3%;

d) the notification further provides that no statutory forms are required for the sale of the types of glass or glass sheets which are made to the registered dealers under the Act;

e) if the sales of "all types of glass and glass-sheets" are made to unregistered dealers then the rate of tax would be at 12 per cent.

19. We do not concur with the proposition put forth by Shri S.D. Sanjay, learned senior counsel that a notification which grants tax incentives should to be liberally construed in support of his submission. It is settled rule of construction of a notification that at the outset a strict approach ought to be adopted in administering whether a dealer/ manufacturer is covered by it at all and if the dealer/manufacturer falls within the notification, then the provisions of the notification be liberally construed.

20. Literally speaking, an exemption is freedom from any liability, payment of tax or duty. It may assume different applications in a growing economy such as provisioning for tax holiday to new units, concessional rate of tax to goods or persons for a limited period under specific conditions and therefore, in Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 this Court has observed that construction of an exemption notification or an exemption clause in contrast with the charging provision has to be tested on different touchstone and held that the eligibility clause in relation to an exemption notification is given strict meaning and the notification has to be interpreted in terms of its language, however, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. This Court has explained the rationale of adopting the said approach as under:

"4. ... In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction..."

21. This Court in Gammon (I) Ltd. v. Commr. of Customs, (2011) 12 SCC 499 while rejecting the plea of the appellant that the exemption notification should receive a liberal construction to further the object underlying it relied upon the decision of a Three-Judge Bench of this Court in Novopan India Ltd., which stated the aforesaid principle and the object behind adopting literal interpretation in determining eligibility for claiming exemption or exception from tax as follows: "16. ...The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee—assuming that the said principle is good and sound—does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the

said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions viz. each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. CCE and Customs that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption." (emphasis supplied)

22. In CCE v. Mahaan Dairies this Court has observed that: "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 wording 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."

23. CCE v. Bhalla Enterprises laid down a proposition that notification has to be construed on the basis of the language used. A similar view has been expressed by a Division Bench of this Court in Tata Iron & Steel Co. Ltd. v. State of Jharkhand, Kartar Rolling Mills v. CCE, Eagle Flask Industries Ltd. v. CCE, Govt. of India v. Indian Tobacco Assn., (2005) 7 SCC 396, Collector of Customs (Preventive) v. Malwa Industries Ltd., (2009) 12 SCC 735 and CCE v. Rukmani Pakkwell Traders.

24. Having said that, we would now examine whether the notification would at all be applicable to the sale of product in question.

25. In the instant case, the State Government has issued a notification and has used the expression "types of glass" and not the expression "forms of glass". Therefore, what requires to be examined is whether the two terms would be identical in their connotation and import.

26. It is a settled law that in taxing statutes the terms and expressions must be seen in their common and popular parlance and not be attributed their scientific or technical meanings. In common parlance, the two words "type" and "form" are not of the same import. According to the Oxford Dictionary, whereas the meaning of the expression "types" is "kind, class, breed, group, family, genus"; the meaning of the word "form" is "visible shape or configuration of something" or the "style, design, and arrangement in an artistic work as distinct from its content". Similarly, Macmillian Dictionary defines "type" as "a group of people or things with similar qualities or features that make them different from other groups" and "form" as "the particular way in which something appears or exists or a shape of someone or something." Therefore, "types" are based on the broad nature of the item intended to be classified and in terms of "forms", the distinguishable feature is the particular way in which the items exist. An example could be the item "wax". The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of wax could be candles, lubricant wax, sealing wax, etc.

27. Admittedly, glassware is a form of glass and it is contended by the assessee that forms of glass are also covered by the said notification. The term glassware would generally encompass ornaments,

objects and articles made from glass. The New Oxford Dictionary, the Merriam-Webster Dictionary and the Macmillian Dictionary refer to the said general meaning while defining it. Glassware would include crockery such as drinking vessels (drinkware) and tableware and general glass items such as vases, pots, etc. Therefore, it cannot be accepted that the expression "types of glass" could have been intended to refer to or include "forms of glass".

28. In the present case, the respondent-dealer is a manufacturer of glassware. In our considered view, the glassware so manufactured by the respondent-dealer though made of glass cannot be considered or called as a "type of glass" in light of the aforesaid discussion and since the notification only provides for the reduction in the rate of tax of types of glass and not for "forms of glass" which is manufactured by the respondent as glassware, the respondent would not be covered by the notification. Keeping that aspect in mind, we hold that the respondent-dealer, a manufacturer of articles of glass, is not entitled to derive the benefit of the notification issued by the State Government, dated 25.06.2001. In that view of the matter, we cannot sustain the impugned judgment and order passed by the High Court.

29. In the result, we allow this appeal and set aside the judgment and order passed by the High Court.

30. Since the matter was pending for quite some time, we direct the appellants not to levy penalty while recovering the difference of tax payable only for the assessment years 2002- 2003 to 2005-2006.

No order as to costs.

Ordered accordingly.

.....J.

(H.L. DATTU) .....J.

(S.A. BOBDE) NEW DELHI;

MARCH 27, 2014.