Torrent Energy Limited vs State Of Gujarat & 2 on 16 April, 2014

Author: Akil Kureshi

Bench: Akil Kureshi, Sonia Gokani

C/SCA/14856/2010 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14856 of 2010
With
SPECIAL CIVIL APPLICATION NO. 711 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TORRENT ENERGY LIMITED....Petitioner(s)
Versus
STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR AMAR N BHATT, ADVOCATE for the Petitioner(s) No. 1
MS MAITHILI MEHTA, LD.ASST.GOVERNMENT PLEADER for the
Respondent(s) No. 1 - 3 in Special Civil Application No.14856 of 2010
MR JAIMIN GANDHI, LD.ASST.GOVERNMENT PLEADER for the
Respondent(s) No. 1 - 3 in Special Civil Application No.711 of 2014.

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CORAM: HONOURABLE MR.JUSTICE AKIL
KURESHI
and
HONOURABLE MS JUSTICE SONIA
GOKANI

Date : 16/04/2014

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Rule. The learned Assistant Government Pleaders waive service of notice of Rule on behalf of respondents in respective petitions.

2. These petitions involve similar issues. They have been heard today and would be disposed of by this common judgment. The petitioners have challenged the authority of the respondents to levy Value Added Tax/Purchase Tax on the capital goods and fuel used in generation of the energy in their units which are situated in Special Economic Zone (hereinafter referred to as 'the SEZ').

3. In Special Civil Application No.14856 of 2010, the petitioner is the company engaged in the business of generation and distribution of power.

C/SCA/14856/2010 JUDGMENT The State Government enacted the Gujarat Special Economic Zone Act, 2004 (hereinafter referred to as 'the SEZ Act'), which was brought into effect from May 15, 2004. The petitioner after obtaining necessary approval from the State Authorities set up its power generation unit in Dahej SEZ Area. The petitioner generates power at the said location and distributes the same to the other units situated in the SEZ and Domestic Tariff Area (for short 'DTA'). The petitioner was also granted eligibility certificate by the

Development Commissioner on October 26, 2009, which certificate provides inter alia that the petitioner would be eligible to avail exemption from taxes, cess, duties, fees or any other levies under the State laws under section 21(1) of the SEZ Act, including :

> "(d) .. .. exemption from payment of sales tax and other taxes for purchase of goods and services from unit in Domestic Tariff Area under Section 21(2) of the Gujarat Special Economic Zone Act, 2004."
>
> C/SCA/14856/2010 JUDGMENT
>
> 4. The case of the petitioner is that section 21 of the Act provides for total exemption from payment of various State taxes to the units situated in SEZ area. The provisions of the SEZ Act have been given overriding effect under section 22 of the SEZ Act. Despite such clear position flowing from sections 21 and 22 of the Act, the State authorities started demanding purchase tax from the petitioner after introduction of section 5A to the Gujarat Value Added Tax Act (hereinafter referred to as 'VAT Act') with effect from April 01, 2008 and upon making matching provisions in section 9 of the VAT Act. A Circular was issued by the State Government on May 02, 2008, which provided inter alia that if the unit situated in SEZ area purchased any "zero rated goods" and used the same for the purposes specified in section 9(5) of the VAT Act, they would be liable to pay purchase tax on such goods. When the petitioner resisted such levy, an order dated August 05, 2010 came to be passed by the Joint Commercial Tax Commissioner, holding the petitioner liable to pay purchase tax as C/SCA/14856/2010 JUDGMENT clarified in the said circular dated May 02, 2008. The petitioner, therefore, filed this petition and challenged such demand raised by the respondents.
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> 5. In Special Civil Application No.711 of 2014, facts are that the petitioner is a company engaged in the business of manufacturing of printing inks, etc. In terms of provisions contained in the SEZ Act, the petitioner set up its unit also in Dahej SEZ area with prior approval of the Government. In the case of this petitioner also, the respondents demanded purchase tax on the "zero rated goods" purchased by the petitioner and consumed in its SEZ unit.

The petitioner was made to pay the following amounts under compulsion by the respondents :

> Assessment Purchase Interest Total Challan Date of Year Tax Amount Number Deposit 2011-12 63-00 13-00 76-00 2767314 5/06/2013 2012-13 7,67,800-00

73,866-00 8,41,666-00 2767316 5/06/2013 2013-14 1,69,739-00 620-00 1,70,359-00 2767315 5/06/2013 The petitioner, therefore, filed this petition and challenged the levy. The petitioner C/SCA/14856/2010 JUDGMENT also prayed that section 9(5) of the VAT Act insofar as it is inconsistent with the provisions of the SEZ Act, be declared invalid.

5. Drawing our attention to the statutory provisions, the learned Senior Counsel Mr.Saurabh Soparkar for the petitioners raised the following contentions :

(i) Section 22 of the SEZ Act contains a non□ obstante clause. The provisions of the SEZ Act, therefore, would have overriding effect over the State fiscal statutes. Section 21 of the SEZ Act in clear terms grants exemption from payment of State taxes to the SEZ units. The expression "from time to time" would include not only the existing laws, but also those made later. In this respect, reliance was placed on the following decisions :

(1) Union Territory of Chandigarh and others v. Rajesh Kumar Basandhi and another, reported in (2003) 11 SCC 549.

C/SCA/14856/2010 JUDGMENT (2) Thyssen Stahlunion v. Steel Authority of India Ltd., reported in AIR 1999 SC 3923.

(3) Management of M.C.D. v. Prem Chand Gupta and another, reported in AIR 2000 SC 454.

(ii) The intention of the State legislation in enacting sections 21 and 22 of the SEZ Act was clear, namely, to grant exemption from various State taxes to SEZ units. This was the general fiscal benefit offered to industrial undertakings to set up their establishments in SEZ areas. To avoid any conflict, section 22 of the SEZ Act gave overriding effect to the provisions of the SEZ Act. Any later enactment without non□obstante clause cannot have primacy over section 21 of the SEZ Act.

(iii) In taxing statute there would be no room for intendment. If the statute does not permit levy of tax, the same cannot be allowed to be C/SCA/14856/2010 JUDGMENT collected having resort to any legislative intent.

6. On the other hand, the learned Assistant Government Pleaders Ms.Maithili Mehta and Mr.Jaimin Gandhi opposed the petitions contending

that section 22 of the SEZ Act intended to give overriding effect only to the existing State laws. Sections 5A and 9(5) of the VAT Act were introduced with effect from April 01, 2008, with conscious intention to collect taxes even from the SEZ units under certain circumstances. They further submitted that if the petitioners' arguments are accepted, sections 5A and 9(5) of the VAT Act would be rendered otiose. The Court would not adopt an interpretation which would render a statutory provision redundant. A non□ obstante clause must be strictly construed and be given effect only to the extent the legislation intended. They relied on the following decisions in support of their contentions :

(1) The Dominion of India (Now the Union of

India) and another v. Shrinbai A. Irani and another, reported in AIR 1954 SC 596. (2) Iridium India Telecom Ltd. v. Motorola Inc., reported in AIR 2005 SC 514.

(3) Bank of India v. Ketan Parekh and others, reported in AIR 2008 SC 2631. (4) A.G. Varadarajulu and another v. State of Tamil Nadu and others, reported in AIR 1998 SC 1388.

7. The SEZ Act was enacted "to provide for the operation, maintenance, management and administration of a Special Economic Zone in the State of Gujarat and to constitute an authority and for matters concerned therewith or incidental thereto". Section 3 of the SEZ Act pertains to establishment of Special Economic Zone and appointment of the Developer. Chapter VIII of the SEZ Act pertains to fiscal benefits and contains C/SCA/14856/2010 JUDGMENT only one section, namely, section 21 of the SEZ Act, which reads as under :

> "21. (1) All sales and transactions within the processing area of the Zone shall be exempt from all taxes, cess, duties, fees or any other levies under any State law to the extent specified below :
>
> (a) Stamp duty and registration fees payable on transfer of land meant for approved Units in the Zone.
>
> (b) Levy of Stamp duty and registration fees on loan agreements, credit deeds and mortgages executed by the Unit, industry or establishment set up in the processing area of the Zone.
>
> (c) Sales Tax, Purchase Tax, Motor Spirit Tax, Luxury Tax, Entertainment Tax and other taxes and cess payable on sales

and transactions.

(2) Inputs (goods and services) made to Zone Units from Domestic Tariff Area shall be exempted from sales tax and other taxes under the State laws.

(3) The Developer shall also be entitled to the benefits of exemption provided in sub-sections (1) and (2) for the entire Zone."

8. Section 22 of the SEZ Act which is contained in Chapter IX which contains miscellaneous provisions gives overriding effect to the Act over other laws for the time being in force in the following manner :

"22. The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force."

9. In terms of section 21 of the SEZ Act, thus the units located in SEZ area enjoy certain concessions and exemptions. In particular, in terms of clause (c) of sub-section (1) of section 21, all sales and transactions within the areas specified therein would be exempt from all taxes, cess, duties, fees or other levies under any State laws to the extent of tax on sales or purchase of goods other than goods specified in Schedule III of the VAT Act, Luxury Tax, C/SCA/14856/2010 JUDGMENT Entertainment Tax and other taxes payable on sales and transactions. The fact that by virtue of the said provision, the petitioners were not required to pay any taxes under the VAT Act, is not in dispute, more so, since section 22 of the SEZ Act gave the provisions of the said Act an overriding effect over other laws for the time being in force. This non-obstante clause is worded in expression "notwithstanding anything contained in any other law for the time being in force". In plain terms, therefore, irrespective of any levy of the above noted taxes prescribed under any other laws by virtue of sections 21 and 22 of the SEZ Act, no such tax could be levied from the petitioners. This much is clear and not even disputed by the respondents. Their contention is that, by virtue of introduction of sections 5A and 9(5) in the VAT Act, the total immunity enjoyed by the petitioners from payment of duties under the VAT Act got to that extent curtailed. It is undoubtedly true that sections 2(37), 5A and 9(5) of the VAT Act were introduced in the VAT Act for special purposes of levying C/SCA/14856/2010 JUDGMENT certain duties even on transactions entered into by the SEZ units.

10. As we shall notice shortly, there was a clear intention on part of the State legislature while introducing such provisions in the VAT Act to collect purchase tax from SEZ units on zero rated sales. The question is, was such legislative intent translated into valid

enactment authorising levy of such tax. It is well known, while interpreting a taxing statute, there is no room for intendment. If in plain terms the statute does not permit collection of of a tax, the same cannot be authorised by interpretative device of gathering legislative intent. There being many Supreme Court judgments on the point, we may refer to a recent decision in the case of State of Rajasthan v. Basant Agrotech (India) Ltd., reported in 2014 (302) ELT 3 (S.C.), in which the Apex Court in this context observed as under :

C/SCA/14856/2010 JUDGMENT "12. Before we appreciate the controversy that has travelled to this Court, we think it necessary to state the fundamental principles that serve as guidance to understand the fiscal legislations and the duty of the Court while dwelling upon the interpretation of taxing statutes.

13. In A.V. Fernandez v. The State of Kerala AIR 1957 SC 657, Bhagwati J. referred to a passage from Partington v. The Attorney General (1869) 4 HL 100 at p.122(B) which is as follows : "As I understand the principle of all fiscal legislation it is this; if the person sought to be taxed, comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

14. The said passage, as has been stated in the said pronouncement was quoted with approval by the Privy Council in Bank of Chettinad v. Income-tax Commmr. AIR 1940 PC 183 and the Privy Council had registered its C/SCA/14856/2010 JUDGMENT protest against the suggestion that in revenue cases "the substance of the matter"

> may be regarded as distinguished from the strict legal position. Proceeding further the learned Judge stated that :
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> "It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provision of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

(Emphasis added)

15. In Commissioner of Sales-tax U.P. v. Modi Sugar Mills Ltd. AIR 1961 SC 1047, Shah, J., speaking for the majority in the Constitution Bench, has observed thus :

"In interpreting a taxing statute, equitable considerations are entirely out of place.

C/SCA/14856/2010 JUDGMENT Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must took squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : if cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

16. In Commissioner of Income-tax, Madras v. Kasturi and Sons Ltd. AIR 1999 SC 1275, a two-Judge Bench has approvingly quoted a passage from the book "Principles of Statutory Interpretation" by Justice G.P. Singh, Sixth Edition, 1966, which is as follows :

"The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words." In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to C/SCA/14856/2010 JUDGMENT recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words :"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." Relying upon this passage Lord Upjohn said : "Fiscal measures are not built upon any theory of taxation".

17. In Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana AIR 1998 SC 120, it has been observed thus :

"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 C/SCA/14856/2010 JUDGMENT 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."

11. Section 2(37) of the VAT Act inserted with effect from April 01, 2008, by Amendment Act (9) of 2008, defines the term "zero rated sale" as under :

"2(37) "zero rated sale" means a sale of goods by a registered dealer to another registered dealer on which the rate of tax leviable shall be zero but tax credit on the purchase related to that sale is admissible."

12. Section 5A of the VAT Act also introduced with effect from April 01, 2008 by the same Amendment Act (9) of 2008, reads as under :

"5A. Zero rated sale :

The following sale shall be zero rated sale for the purpose of this Act and tax credit on the purchase related to such sale shall be allowed subject to such conditions as may be prescribed :

(1) Sale of goods to the Developer or Co-developer of Special Economic Zone as defined in the Gujarat Special Economic Zone Act, 2004 (Guj. 11 of 2004); or (2) sale of goods to a unit carrying in its business in the processing area or in the demarcated area of Special Economic Zone and approved as such by the Approval Committee as defined in the Gujarat Special Economic Zone Act, 2004 (Guj. 11 of 2004) :

Provided that the sale of goods specified in Schedule III shall not be zero rated sale:

Provided further that the sale of certain goods or sale of goods by any dealer or class of dealers as may be specified by the State Government by notification in the Official Gazette, shall not be zero rated sale."

13. Section 9 of the VAT Act pertains to levy of Purchase Tax. Sub-section (5) of section 9, which is introduced with effect from April 01, 2008, by the Amendment Act (9) of 2008, reads as under :

"9. Levy of purchase tax :

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xxx xxx xxx

(5) Where a dealer liable to pay tax under this Act purchases taxable goods sale of which is zero rated under section 5A and the goods so purchased by him are -

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

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

(iii) used as fuel for the manufacture of goods,

(iv) used as raw materials or capital goods in manufacture of goods specified in Schedule I or goods exempt from the whole of the tax by a notification under sub-section (2) of section 5 or in the packing of goods so manufactured.

(v) used as fuel or capital goods in generation of electrical energy including captive power,

(vi) not connected with his business, C/SCA/14856/2010 JUDGMENT

(vii) used as fuel in motor vehicles,

(viii) used as capital goods in transfer of property in goods (whether as goods or n some other form) involved in execution of works contract,

(ix) used for transferring the right to use for any purpose (whether or not for a specified period), for cash, deferred payment or other valuable considerations, or

(x) used for any other purpose as may be specified by the State Government by notification in the Official Gazette, then such dealer shall be liable to pay purchase tax on the turnover of such purchases at the rate set out against each of such goods specified in Schedule II."

14. Section 11 of the VAT Act pertains to tax credit. Sub-section (1) of section 11 allows the registered dealer who has purchased taxable goods to claim tax credit equal to the amount of tax paid by him during the tax period under sub-sections (i) to (v) or (vi) of section 9, was also introduced with effect from April 01, 2008.

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15. It can, thus, be seen that after April 01, 2008, the VAT Act has made provisions for collection of purchase tax even from units located in SEZ areas in relation to "zero rated sale". The legislative scheme appears to be that the sales which fall under the "zero rated sales"

> would invite no sales tax to be borne by the seller, but the purchaser would have to pay the purchase tax and, in turn, would be entitled to take tax credit as provided under section 2(37) and section 11(1) of the VAT Act. Whatever be the intention, in our opinion, without there being any clear provision giving such statutory provisions primacy over section 21 of the SEZ Act, no such tax can be levied. As noted above, in a fiscal statute, there is no room for intendment. If the statute validly permits the State to levy tax, the same must be allowed to be collected, no matter how harsh the consequences may be. Conversely, if in the plain terms the statute does not permit collection of tax, the same cannot be authorised by falling back upon any legislative intent. Section 21 of the SEZ Act C/SCA/14856/2010 JUDGMENT in clear terms exempts all State taxes on sale or purchase of goods, other than those specified in Schedule III of the VAT Act, Luxury tax, Entertainment Tax payable on sales and other transactions within the areas specified in sub-section (1) of section 21 of the Act. By virtue of a non-obstante clause contained in section 22 of the SEZ Act, such provision would have effect notwithstanding anything contained in any other law for the time being in force. The expression "for the time being in force" has been explained by the Supreme Court on several occasions. In the case of Rajeshkumar Basandhi (supra), it was observed as under :
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> "7. It may be pertinent at this stage to see the meaning of the phrase "for the time being" as given in the Stroud's Judicial Dictionary as quoted in the judgment of the Tribunal. It reads as follows :
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> "The phrase 'for the time being', may according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite C/SCA/14856/2010 JUDGMENT state of facts which will arise in the future, and which may (and probably will) vary from time to time."

The respondent also refers to the Law Dictionary by Dr. A. R. Gupta, 1979 Ed. published by Eastern Law House and the phrase 'for the time being', has been indicated therein to mean as follows :

> "Time Being. The phrase "for the time being"
>
> may, according to its context, may mean the time present or denote a single period of time; but its general sense is that of time indefinite and refers to an indefinite state of facts which will arise in the future and which may vary from time to time. Re Gunter's Settlement Trusts, 1949 Ch. 502."
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> xxx xxx xxx

10. We also find that in Law Lexicon by P. Ramanatha Aiyar, 2nd Ed., Reprint 2000, the expression "time being" has been indicated to mean :

> "Time being.□ The phrase "for the time being" may according to its context mean the time present or denote a single period of time, but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the C/SCA/14856/2010 JUDGMENT future, and which may (and probably will) vary from time to time. [Ellison v. Thomas, 31 LJ Ch 867; 32 LJ Ch 32; Coles v. Pack, LR 5 CP 65]."
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> xxx xxx xxx
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> 16. The intention of the appellant also does not appear to be to confine the meaning of the phrase "for the time being" to a single time which would be demonstrated by the fact that in the notification issued for recruitment, one of the conditions was that the candidate should have experience of two years at the Bar. This condition was introduced by amendment to Section 87□A on 24□12□1991 that is to say the amendment in the rule regarding two years experience was included in the requirement of eligibility.
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> xxx xxx xxx The consequence of giving effect to the notification dated 13□1□1992 w.e.f. 1□4□1991 would be that Punjab Rules as existing on 1□4□1991 would be applicable. If the argument of the appellant is accepted that the phrase "for the time being" was applicable for only one time and not for future amendments, Punjab Rules, as existed on 1□4□1991 alone would apply without taking note of the subsequent amendment in the rules i.e. as made on 24□12□91 regarding requirement of two years practice. But the

> appellant did not adhere to that position which is being C/SCA/14856/2010 JUDGMENT canvassed now but in the notification for recruitment the position as brought about by amendment in the Punjab Rules as on 24□12□1991 was incorporated and given effect to. The appellant cannot have it both ways. Once having given effect to the notification dated 13□1□1992 with effect from 1□4□1991 it should have adhered to the rules as existed on 1□4□1991 if it wanted to say that the phrase "for the time being" was meant for a single time and not for future varying situation and amendments. Thus the stand taken by the appellant becomes self□contradictory to its own conduct in incorporating the rule as amended on 24□12□1991 i.e. subsequent to 1□4□ 1991 with effect from which date the Punjab Rules were made applicable to the services of the Union Territory of Chandigarh. The mere fact that notification was issued on 13□1□1992 will not change the position if it were to be interpreted that the phrase "for the time being" was for a single time. .. .."

16. In the case of Thyssen Stahlunion GMBH(supra), in somewhat different context the Supreme Court interpreted the expression "any other law for the time being in force". It was held that the parties aggrieved to bind C/SCA/14856/2010 JUDGMENT themselves to the new Act, which was enacted later on. It was observed that the provisions of the Arbitration Act would apply to the arbitration proceedings which will be in force at the relevant point of time when the arbitration proceedings are held. It was observed that :

> "44. .. .. .. When the agreement uses the expressions "unless otherwise agreed" and "law in force" it does give option to the parties to agree that new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into force and it cannot be said that agreement has to be entered into only after coming into force of the new Act."

17. In the case of Prem Chand Gupta (supra), the Apex Court held and observed as under :

> "13. In this connection, one submission of learned counsel for the respondent□ workman may be noted. He submitted that as laid down by Regulation 4(1), the Rules for the time being in force as mentioned therein would refer to only those Rules which were C/SCA/14856/2010 JUDGMENT in force when Service Regulations of 1959 were promulgated and not any latter Rules.It is difficult to countenance this submission. Rules for the time being in force will have a nexus with the regulation of condition of service of the municipal officers at the relevant time as expressly mentioned in Regulation 4(1). Therefore, whenever the question of regulation of conditions of service of the municipal officers comes up for consideration, the relevant Rules in force at that time have to be looked into. This is the clear thrust of Regulation 4(1).

Its scope and ambit cannot be circumscribed and frozen only to the point of time in the year 1959, when the Service Regulations were promulgated. If such was the intention of the framers of the Regulation, Regulation 4(1) would have employed a different phraseology, namely, "rules at present in force" instead of the phraseology "rules for the time being in force". The phraseology "rules for the time being in force" would necessarily mean rules in force from time to time and not rules in force only at a fixed point of time in 1959 as tried to be suggested by learned counsel for the respondent□workman."

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18. The consistent view of the Supreme Court being that an expression "for the time being in force" would include even the legislations made at a later point of time and such expression would be akin to the law for the time being in force. The non□obstante clause contained in section 22 of the SEZ Act, thus, would give overriding effect to the provisions of the State Acts, those not only existing, but made later on.

19. Having said that the question still remains whether the non□obstante clause contained in section 22 of the SEZ Act had a limited application ?

20. As rightly pointed out by the learned Assistant Government Pleaders, a non□obstante clause has to be seen in light of the legislative intent. In the case of A.G. Varadarajulu (supra), the Apex Court observed as under :

"16. It is well settled that while dealing with a non obstane clause under which the legislature wants to give C/SCA/14856/2010 JUDGMENT overriding effect to a section, the Court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section.In Aswini Kumar v. Arbinda Bose, AIR 1952 SC 369. Patanjali Sastri, J. observed ; "The enacting part of a statute must, where it is clear, be taken to control the non□obstante clause where both cannot be read harmoniously". In Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85 (at 139) : (AIR 1971 SC 530) Hidayatullah, CJ observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the

scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not".

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21. Such intention, however, has to be gathered from the statute containing such non-obstante clause. We have perused sections 21 and 22 of the SEZ Act and also other provisions contained in the SEZ Act. There is nothing to indicate that section 22 of the SEZ Act desired to have limited application when it came to the fiscal benefits contained in section 21 of the SEZ Act. As we have noted, section 21 of the SEZ Act granted several benefits of tax waivers to the transactions entered into in the specified areas within the SEZ. These were necessarily State taxes. But for section 21 of the SEZ Act such taxes would be levied even on the transactions entered into within the said specified areas. In absence of section 22 of the SEZ Act, there would be a conflict between various taxing statutes and section 21 of the SEZ Act. In order to avoid such conflict, section 22 of the SEZ Act was enacted giving overriding effect. Having done so, in our opinion, without making any matching provision in the VAT Act, the overriding effect given to the provisions made in the SEZ Act by virtue of C/SCA/14856/2010 JUDGMENT section 22 of the Act cannot be whittled down. If the VAT Act and in particular, sections 5A and 9(5) also had a similar non-obstante clause, it would become a matter of legal scrutiny as to which one of the two non-obstante clauses would prevail. In the present case, we are not confronted with such a situation. It was in this background that the Supreme Court in the case of Ketan Parekh (supra) had an occasion to consider as to which one of the two clauses, namely, Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993, would prevail since both contained non-obstante clauses.

22. In the case of Iridium India Telecom Ltd. (supra), the Court was concerned with vastly different situation. The question was whether section 97(1) of the Code of Civil Procedure (Amending Act of 1976) provided for

general repeals of any provision inserted in the principal Act by the State Legislature or High C/SCA/14856/2010 JUDGMENT Court before the commencement of the Amendment Act. It was observed that obviously what was done by section 97(1) of the Amending Act was to sweep away the amendments made by the State Legislature or the High Court in exercise of its delegated powers of legislation. The said provision would not curtail the powers of the High Court to make Rules under section 129 of the Code of Civil Procedure. It was observed that section 129 of the Code is neither an amendment made by the State Legislature, nor by the High Court and does not get overridden by section 97(1) of the Amending Act of 1976.

23. In the case of Shrinbhai A. Irani (supra), the Apex Court observed that ordinarily there should be close proximity between the non-obstante clause and operative part of the section, however, the non-obstate clause need not necessarily be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only C/SCA/14856/2010 JUDGMENT one interpretation, a non-obstante clause cannot cut down that construction and restrict the scope of its operation.

24. In the case of Ramdev Food Products (P) Ltd. (supra), the Apex Court observed as under:

"NON OBSTANTE PROVISIONS

66. The non obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. A non obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same. [See ICICI Bank Ltd. v. Sidco Leathers Ltd. and Ors., 2006 (5) SCALE 27]"

These judgments thus do not govern our situation.

25. In our opinion, the State legislature desired to give overriding effect to all the provisions of SEZ Act over other State laws and in terms of section 21, particularly, in respect of fiscal statutes, prescribing levy of various C/SCA/14856/2010 JUDGMENT duties. There was no intention to limit the operation of this non-obstante clause. No such intention is borne out from the SEZ Act. We are afraid any other contrary intention emerging from any other State fiscal statute would not limit the scope of the non-obstante clause when no overriding effect is given to such provision though enacted much after SEZ Act was introduced.

26. In the result, in our opinion, the demand raised by the respondents from the present petitioners for payment of purchase tax under section 9(5) of the VAT Act is invalid and impermissible. The same is, therefore, quashed. The tax recovered, if any, from the petitioners shall be refunded with statutory interest, which shall be done latest by May 31, 2014. Rule is made absolute to the aforesaid extent. There shall be, however, no order as to costs.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

C/SCA/14856/2010 JUDGMENT

Aakar