

Gajendra Singh vs Addl. Commissioner (J) And Others on 12 March, 2018

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Bench: B. Amit Sthalekar

HIGH COURT OF JUDICATURE AT ALLAHABAD

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RESERVED

Court No. - 6

Case :- WRIT - C No. - 49411 of 2008

Petitioner :- Gajendra Singh

Respondent :- Addl. Commissioner (J) And Others

Counsel for Petitioner :- Sudamaji Shandilya, Sudhir Shandilya

Counsel for Respondent :- C.S.C.

Hon'ble B. Amit Sthalekar, J.

Heard Shri Vivek Shandilya, learned counsel for the petitioner and the learned standing counsel for the respondents.

The petitioner in the writ petition is seeking quashing of the orders dated 30.7.2008 and 19.3.2008 arising out of proceedings under the Indian Stamp Act. Briefly stated the case of the petitioner is that he took a loan amounting to Rs.4,50,000/- from the Allahabad Bank Branch, Madhogarh, District Jalaun for setting up Mentha Oil Plant and for the purposes of the loan he mortgaged 3.112

hectare of his agricultural land. The loan was taken under the U.P. Agricultural Credit Act, 1973 (hereinafter referred to as the Act, 1973). A hypothecation agreement was also executed on 28.11.2007 between the petitioner and the Bank as security for the repayment of the loan advance. It is stated that the agreement was executed on payment of stamp duty of Rs.100/-. On an allegation that there was deficiency of stamp duty a report was sent by the Dy. Registrar, Madhogarh to the Inspector General of Registration Orai dated 19.12.2007 mentioning therein that a sum of Rs.18,000/- was payable towards stamp duty on the agreement dated 28.11.2007 under Article 40(B) of Scheduled I-B of the Act, 1899. Notice was issued to the petitioner to which he also submitted his reply stating therein that the loan was taken for agricultural purposes under the U.P. Agricultural Credit Act and, therefore, it was not chargeable to stamp duty beyond Rs.100/-.

The Collector, Stamp however by his order dated 19.3.2008 has rejected the claim of the petitioner that he was an agriculturist and that the loan taken for establishing a Mentha Oil Plant was an agricultural activity and the deficiency of stamp duty of Rs.18,000/- was determined with penalty of like amount. Aggrieved, the petitioner filed stamp appeal which was also rejected by the Addl. Commissioner (Judicial) Jhansi Division by his order dated 30.7.2008.

The contention of Shri Vivek Shandilya, learned counsel for the petitioner is that the petitioner was an agriculturist and that the loan was taken for purposes of establishing a Mentha Oil Plant which is an agricultural activity and for purposes of loan he had also mortgaged 3.112 hectares of agricultural land in favour of the Bank. Reference has been made to the definition of "Agriculture" and "Agricultural Purposes" as defined in Section 2(a) of the Act, 1973. Section 2(a) of the Act, 1973 reads as under:

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

(a) "agriculture" and "agricultural purpose" includes making land fit for cultivation, cultivation of land, improvement of land (including development of sources of irrigation), raising and harvesting of crops, horticultures, forestry, cattle breeding, animal husbandary, dairy farming, piggery, poultry farming, seed farming, pisciculture, apiculture, sericulture and such other activities as are generally carried on by persons engaged in any of the aforementioned activities and also includes -

(i) marketing of agricultural products, their storage and transport;

(ii) the acquisition of implements and machinery in connection with any such activity;

(iii) the acquisition of gohar-gas plant; and

(iv) the establishment and maintenance of agro-service centres .

Provided that the construction of a house for personal use in rural area on abadi land or the repair, modernization of extension thereof and purchase, storage and acquisition of non-conventional or alternate energy plant and machinery or matters connected therewith shall be deemed to be an agricultural purpose for the purposes of this Act.

Explanation. - For the purposes of this clause, the expression "agro-service centre" means a place or a shop where the entrepreneurs, trained by the U.P. State Agro-Industrial Corporation Limited, carry on the sale of seeds, fertilizers, insecticides, pesticides, or other goods of agricultural use or agricultural operations in respect of land held by others by tractors or other mechanised process on hire or repair of the agricultural implements ;]

(b) "agriculturist" means a person who is engaged in agriculture ;

The submission of the learned counsel for the petitioner is that the proviso to section 2(a) clearly states that construction of a house for personal use in rural area on abadi land or the repair, modernization or extension thereof and purchase, storage and acquisition of non-conventional or alternate energy plant and machinery or matters connected therewith shall be deemed to be an agricultural purpose for purposes of this Act. He therefore submits that the establishment of the Mentha Oil Plant was an activity having a direct nexus to 'agriculture' and therefore was for an 'agricultural purpose' and therefore machinery or connected matters would be deemed to be an agricultural purpose. Agriculture or agricultural purposes has not been defined in the Indian Stamp Act, 1899.

I have gone through the documents on record as well as the pleadings of the parties.

From a bare reading of the definition of agriculture and agricultural purposes as defined in Section 2(a) of Act, 1973 I find it difficult to accept the proposition advanced by the learned counsel for the petitioner that establishment of a Mentha Oil Plant is an agriculture activity or an activity for agricultural purposes. Establishment of the Mentha Oil Plant cannot be said to be the acquisition of implements and machinery in connection with any such activity (meaning thereby agricultural activity) as defined in Clause (ii) to Section (a) of Section 2 of the Act, 1973. Moreover in the proviso also establishment of Mentha Oil Plant cannot be said to be an activity in the nature of repair, modernization or extension thereof and purchase, storage and acquisition of non-conventional or alternate energy plant or machinery to render it an agricultural activity or an activity for agricultural purposes. The establishment of the Mantha Oil Plant has no nexus with storage or acquisition of non-conventional or alternate energy plant or machinery or matters connected therewith. The establishment of Mentha Oil Plant is at the most an industrial activity which is wholly unrelated to an agricultural activity. Merely because the petitioner had mortgaged 3.112 hectare of his agricultural land for obtaining the loan for establishing a Mentha Oil Plant does not mean that the Mentha Oil Plant itself becomes an agricultural purpose. The petitioner may be an agriculturist so far as his activity of cultivation of 3.112 hectares of agricultural land is concerned but it is not that every agriculturist perforce sets up a Mentha Oil Plant or is duty bound by circumstances to establish a Mentha Oil Plant.

The learned counsel for the petitioner next submitted that he is entitled for exemption from payment of stamp duty under the heading of exemption given in Article 40 of Schedule I-B of the Indian Stamp Act. Exemptions given in Article 40 of Scheduled I-B relating to mortgage deed reads as under:

"Exemptions- Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883, or by the Agriculturists under the Agriculturists Loans Act, 1884, or by their sureties as security for the repayment of such advance."

The U.P. Agricultural Credit Act, 1973 is not one of the Acts mentioned in the exemption under Article 40 of Schedule I-B and the Indian Stamp Act being a taxing statute the words used in the statute must be given a strict interpretation in order to reflect the intention of law makers and merely because the loan advances under the Land Improvement Loans Act 1883 or land taken by the agriculturist under the Agriculturist' Loans Act 1884 or by their sureties as security of repayment of advance, has been mentioned under the heading of exemptions it cannot be construed that a similar exemption would be extendable to the Act, 1973. If it was the intention of the legislature to grant exemption to an instrument executed by person or persons taking advances under the Act, 1973, the relevant provision of the statute would have said so and, therefore, what is not stated specifically must be assumed to have been deliberately omitted in the best wisdom of the legislature.

A Division Bench of this Court in the case of Rajiv Nagar Sahkari Awas Samiti Ltd. Aligarh Vs. Chief Controlling Revenue Authority/Commissioner, Agra and others reported in 2003 (5) AWC 4509 has held in paragraphs 17, 18, 22, 26, 27 and 28 as under:

"17. A Taxing Statute cannot be struck down merely on the ground that the imposition is heavy vide *Jagannath v. Union of India* AIR 1962 SC 148. There are several Taxing Statutes which may be harsh, but they cannot be held to be unconstitutional for that reason. Thus, when a Sales Tax law is made under which the dealer cannot pass on the incidence of the tax to the purchaser, this will not make the law unconstitutional vide *S. Dodar v. State of Kerala* AIR 1974 SC 2272 (paras 12 to 14) and *M/s, Hoechst Pharmaceuticals Ltd. v. State of Bihar* AIR 1983 SC 1019. A Stamp Act, as already observed above, is a Taxing Statute and as regards a Taxing Statute it is well-settled that equity has no place in it. As observed by Rowlatt, J., in his classis statement in *Cape Brady Syndicate v. IRC* (1921) 1 KB 64. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read. In nothing is to be implied" and this view has been approved by our Supreme Court in *CIT v. Ajax Products Ltd.* AIR 1965 SC 1358 and *Banarsi Devi V. I.T.O.*, AIR 1964 SC 1742.

18. The Supreme Court in *CIT v. Firm Muar* AIR 1965 SC 1216, observed that equity is out of place in tax laws. In *CIT v. Madhav Prasad Jatia* 1976 (4) SCC 92, the Supreme Court held that there could be no consideration of equity if the language of the provision was plain and clear. In *CIT v. Shahzada Nand* AIR 1966 SC 1342, the Supreme Court observed that while interpreting a Taxing Statute one cannot go by the notion as to what is just and expedient.

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22. This principle is applied with particular emphasis while interpreting Taxing Statutes vide ITO v. Nadar AIR 1968 SC 623 and the fundamental principle of interpreting Taxing Statutes is the principle of strict construction. In this respect Taxing Statutes are to be interpreted differently from beneficial legislation (e.g., labour laws) vide S.K. Verma v. Industrial Tribunal AIR 1981 SC 422, or the Constitution vide State Trading Corporation v. CTO AIR 1963 SC 1811, where the principle of liberal interpretation applies.

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26. In AV Fernandez v. State of Kerala AIR 1957 SC 657, the Supreme Court of India, stated the principle as follows :

"If the Revenue satisfies the Court that the case falls strictly within; the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners 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."

27. It is said that tax and equity are strangers vide Partington v. Attorney-General, . this view was best expressed by Lord Cairns as follows :-

"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. On the other hand if the Court 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."

28. In a Taxing Statute, if a dealer or assessee falls within the four corners of the statute then the statutory provision will apply, but if he does not it will not apply. There is no scope for arguments of hardship, equity etc., in interpretation of a taxing law."

Therefore for reasons aforesaid I do not find any illegality or infirmity in the impugned orders. However, so far as imposition of one time penalty on the petitioner is concerned it cannot be assumed that the petitioner intended to avoid stamp duty or had a deliberate motive to do so nor has any such finding been recorded by the Collector, Stamp or by the appellate authority.

For reasons aforesaid while dismissing the writ petition the order of the Stamp Authority is modified and it is directed that the petitioner will not be liable for payment of one time penalty imposed upon him.

Dated: 12th March, 2018.

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