

(2007) 09 RAJ CK 0066
In the Rajasthan High Court

Assistant Commercial Taxes Officer

APPELLANT

Vs

Rajasthan Gramodyog Sansthan

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Rajasthan Khadi and Village Industries Commission Act, 1956 — Section 8(5)
Rajasthan Sales Tax Act, 1954 — Section 11B, 7AA

Citation : (2008) 2 RLW 1337

Hon'ble Judges : R.M. Lodha, J;Chandra Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—M/s. Rajasthan Gramodyog Sansthan (for short, "the assessee") is a registered dealer recognised by the Rajasthan Khadi and Village Industries Commission Act, 1956 (for short, "the Central Act LXI of 1956"). The assessee is engaged in the production and sale of Masalas. In the year 1979-80, the assessee is said to have made inter-state sale of processed Masalas for an amount of Rs. 28,971.88. Again during the year 1980-81, the assessee is said to have made inter-state sale of processed Masalas for an amount of Rs. 16,139.35. The assessee showed the sale for both the years as exempt.

2. The assessing authority, however, did not accept the stand of the assessee that the sale effected in the year 1979-80 and 1980-81 were exempted. The assessing authority, accordingly, imposed the Sales Tax @ 10% and also imposed the penalty u/s 9 read with Section 16(1)(e) and 7AA of the Rajasthan Sales Tax Act, 1954. The assessing authority also imposed interest u/s 11-B of that Act.

3. The assessee challenged the order of assessment by filing an appeal before the Deputy Commissioner of Appeals-III, Commercial Taxes, Jaipur. The appellate authority maintained imposition of tax, interest and penalty u/s 7AA but set aside the penalty imposed u/s 16(1)(e).

4. The assessee then approached the Rajasthan Sales Tax Board by filing second

appeal against the order of the Deputy Commissioner of Appeals. Rajasthan Tax Board held that the assessee was entitled to exemption from the Sales Tax and, accordingly, quashed the imposition thereof. The interest u/s 11-B was also quashed. Aggrieved by the order dated September 8, 1987, passed by the Rajasthan Tax Board, the Assistant Commercial Taxation Officer, filed Sales Tax Revision before the Rajasthan Taxation Tribunal. By the order dated 30th June, 1998, the Rajasthan Taxation Tribunal dismissed the revision application preferred by the assessing authority. It is this order which is impugned in the present writ petition.

5. Central Act LXI of 1956 was enacted with a view to promote and develop Khadi and Village Industries. By the said Act, Khadi and Village Commissions were sought to be established. Section 2(h) of that Act defines "village industries" which means all or any of the industries specified in the Schedule and includes any other industry deemed to be specified in the Schedule by reason of a notification u/s 3. Item 10 of the Schedule appended to the Central Act of 1956 under Sections 2(h) and 3(1) thereof related to the industries of processing of cereals and pulses. The said Item 10 was substituted in the Schedule by the notification dated 6th August, 1979 published in the Gazette of India dated 1st September, 1979. Upon substitution in the year 1979, item 10 of the Schedule appended to the Central Act of 1956 reads thus:

Processing, packaging and marketing of cereals, pulses, spices, condiments, masalas, etc.

6. In exercise of the powers conferred upon the State Government u/s 8(5) of the Central Act LXI of 1956, the State Government issued notification of exemption inter-alia in respect of sale in the course of inter-state trade or commerce of the produce of the village industries as set out in the Schedule. The notification dated 6th March, 1978 issued by the State Government u/s 8(5) of the Central Act LXI of 1956 is reproduced by us as it is:

S.O. 192- In exercise of the powers conferred by Section 8(5) CST Act, 1956, the State Government hereby directs that no tax under the said Act shall be payable by any dealer having his place of business in the State who holds an exemption certificate without payment of any fee issued to him on the recommendation of the Khadi and Village and Industries Commission constituted under the Khadi and Village Industries Commission Act, 1956 (Central Act 61 of 1956) or Rajasthan Khadi and Village Industries Board constituted under the Rajasthan Khadi and Village Industries Board Act, 1955 (Rajasthan Act 5 of 1955), in respect of the sale by him from any such place of business in the course of inter-State trade or commerce of the goods specified in the list appended hereto:

(1) Hand-spun and hand woven Khadi and yarns made of Cotton, Wool, silk or any other natural fibres of animal hair or of mixture of any two or all of them;

(2) Ready-made garments, and other articles made of Khadi including razais, gaddas, pillows and handbags and jerseys, sweaters, socks and handgloves

made of hand-spun and hand-woven woollen yarn;

(3) The products of the village industries as defined in the Khadi and Village Industries Commission Act, 1956 (Central Act 61 of 1956) listed in the Schedule appended hereto.

SCHEDULE

1. Beekeeping
2. Cottage Match Industry
3. Cottage Pottery Industry
4. Cottage Soap Industry
5. Flaying, curing and tanning of hides and skins and ancillary industries connected with the same and cottage leather industry
6. Ghani Oil Industry;
7. Handmade paper
8. Manufacture of cane-gur and Khandsari
9. Palm-gur making and other palm products industry.
10. Processing cereals and pulses
11. Manufacture and use of manure and methane gas from cowdung and other waste products (such as flesh of dead animals, night soil etc.)
12. Lime manufacturing Industry
13. Manufacture of Shellac
14. Collection of forest plants and fruits for medicinal purposes
15. Fruit processing and fruit preservation
16. Bamboo and cane work
17. Blacksmithy
18. Carpentry
19. Fibre other than coir
20. Manufacture of household utensils in aluminium
21. Manufacture of Katha; and
22. Manufacture of Gum resins.

Explanation:- For the purpose of this notification, "Khadi" means any cloth woven on handloom in India from Cotton, Silk or Woollen or natural fibre of animal hair yarn hand-spun in India or from the mixture of any two or all of such yarns. This

shall have immediate effect.

7. It would be seen that the produce of the village industries in the notification dated 6th March, 1978 from exemption of Sales Tax has been lifted from the Schedule appended to the Central Act LXI of 1956. Item 10 of the Schedule appended to the Central Act of 1956 was substituted by the notification published in the Gazette of Government of India on 1st September, 1979 w.e.f. 6th August, 1979 by bringing in the processing, packaging and marketing of Masalas as village industry. Admittedly, no consequential amendment in the notification issued by the State Government on 6th March, 1978 in exercise of the powers conferred by Section 8(5) of the Central Sales Tax Act, 1956 was made.

8. The question that falls for our consideration and determination in the writ petition is: Whether Item 10 of the Schedule appended to the Central Act LXI of 1956 w.e.f. 6th August, 1979 published in the Gazette of Government of India on 1st September, 1979 can be read in item 10 of the notification dated 6th March, 1978 issued by the State Government in exercise of its powers conferred u/s 8(5) of the Central Act LXI of 1956?

9. The Counsel for the revenue strenuously urged that the notification dated 6th March, 1978 providing for exemption from the Sales Tax is clear and unambiguous and since item 10 of the Schedule appended thereto relates to the processing of cereals and pulses, the said produce of the village industries are exempted only. According to him, since the State Government did not amend the notification dated 6th March, 1978, the amended item 10 of the Schedule appended to the Central Act LXI of 1956 cannot be read therein. In support of his submission that the exemption notification must be construed strictly and that the benefit of doubt or ambiguity, if any, must go to the State, the Counsel relied upon the decision of the Supreme Court in the case of *Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*,

10. On the other hand, Mr. Vimal Choudhary, Counsel for the assessee supported the order of the Rajasthan Taxation Tribunal.

11. The effect of incorporation of an earlier statute or statutory provision into later law; the reference of the earlier enactment into a later Act and citation of one statute to another has engaged the attention of the courts from time to time.

12. Lord Esher, Mr. expositied the effect of incorporation in his classic statement thus: "if a subsequent Act brings into itself by reference some of the clauses of a former Act: the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it." Our own Supreme Court has held that when an earlier Act is incorporated by reference into a later Act, the provision so incorporated become part and parcel of the later Act as if they had been "bodily transposed into it." The courts have also drawn distinction between mere reference or citation of one statute into another and incorporation. The distinction between incorporation by reference and adoption of provision by mere reference or

citation is not too easy to discern. Though, there are no clear cut guidelines, ultimately, it is a matter of probe into the intention and the purpose of the legislation and insight into the working of an enactment, if one or the other view is adopted. The language used in the statute for the purpose of reference or incorporating the provision of an existing Act and the effect of it on its working may help the court in reaching the conclusion.

13. Seen thus, upon careful consideration of the notification dated 6th March, 1978 issued by the State Government in exercise of the powers conferred by Section 8(5) of the Central Sales Tax Act, 1956, it transpires that the State Government has as a matter of fact reproduced the entire Schedule appended to the Central Act LXI of 1956 as was existing in its notification. The purpose and intention of the notification dated 6th March, 1978 was to exempt the produce of the village industries defined in the Central Act LXI of 1956. Looking to the said purpose and the intention of exemption, there appears to be no justification to exclude item 10 of the Schedule amended by the notification published in the Government of India Gazette on 1st September, 1989. On proper construction of the notification dated 6th March, 1978, the policy of the State Government that could be discerned was that the produce of the village industries as defined in the Central Act LXI of 1956 should be left out of the sales tax. If that be the policy and the purpose and intention of the notification dated 6th March, 1978, there shall be no justifiable reason to exclude the amended item 10 of the schedule from the notification dated 6th March, 1978 issued by the State Government.

14. In our thoughtful consideration, the notification dated 6th March, 1978 issued by the State Government for exemption from sales tax of the produce of the village industries as defined in the Central Act of 1956 was by way of reference or citation and not by way of incorporation. We may refer to the decision of the Supreme Court in the case of State of Kerala Vs. Attesee (Agro Industrial Trading Corporation), , in support of what we have said above. The question before the Supreme Court in the case of Attesee was whether in respect of the assessment years 1971-72 and 1972-73, the exemption given to Cotton Fabrics under Item 7 of first Schedule to Central Excise and Salt Act, 1944 should be restricted to Cotton Fabrics as defined in the Act of 1944 as it was on 1.4.1963 or whether it would also cover the goods falling under the said definition after its amendment in the year 1969. This is what the Supreme Court observed in paragraph 3 of the report:

These are the relevant statutory provisions. On these, the question to be considered is: what is the effect of the mention of the definition of "Cotton fabrics" given in the 1944 Act in the Schedule to the 1963 Act? Does it attract only the said definition as on 1.4.1963 or also the subsequent amendments thereto? To appreciate the contentions urged, it is necessary to make a brief reference to the principles of interpretation of an enactment which, for purposes of convenience, refers to or incorporates a provision of another. These have been

discussed in various earlier decisions viz. AIR 1931 149 (Privy Council) *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, *Ram Sarup Vs. Munshi and Others*, *Ram Kirpal Bhagat and Others Vs. The State of Bihar*, *New Central Jute Mills Co. Ltd. Vs. The Assistant Collector of Central Excise, Allahabad and Others*, *The State of Madhya Pradesh Vs. M.V. Narasimhan*, *Bajaya Vs. Gopikabai and Another*, *Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another*, and *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, It is unnecessary to make a detailed reference to these decisions. It is sufficient to say that they draw a distinction between referential legislation which merely contains a "reference to, citation of, a provision of another statute and a piece of referential legislation which incorporates within itself a provision of another statute. In the former case, the provision of the second statute, along with all its amendments and variations from time to time, should be read into the first statute. In the latter case, the position will be as outlined in *The State of Madhya Pradesh Vs. M.V. Narasimhan*, where, after referring to AIR 1931 149 (Privy Council) this Court summed up the position thus (at P. 1841 of AIR):

On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

- (a) where the subsequent Act and the previous Act are supplemental to each other;
- (b) where the two Acts are in pari materia;
- (c) where the amendment in the previous Act, if not imported into the subsequent Act wholly unworkable and ineffectual; and
- (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.

Applying the above principles to the facts of the present case, the High Court in its judgment on a reference made to it under the 1963 Act (and reported in 41 STC 1): (1978) Tax LR NOC 76 (Ker) observed:

In the light of the principles thus formulated, it seems unnecessary for us to labour the point whether we are confronted in these cases with a "reference" or "citation" on the one hand, or an "incorporation" on the other, of the definition of "cotton fabrics" in item 19 of the Schedule 1 of the Central Excises and Salt Act, into the provisions of Section 9 read with item No. 7 of the HI Schedule of the General Sales Tax Act, 1963. If the definition was merely by way of "reference" or "citation", the referred or cited provision grows and shrinks with the changes in the parent statute. Even in the case of an incorporated definition remains static

and is unaffected by the developments or fluctuations of the parental source from which it was incorporated, two of the well-recognised exceptions formulated by the Supreme Court in the *The State of Madhya Pradesh Vs. M.V. Narasimhan*, seem to apply here, that is, exceptions (a) and (c)? The concept of "cotton fabrics" in the Central Excises and Salt Act seems to be integrally linked with the provisions of the General Sales Tax Act and we do not think that we would be justified in regarding the latter Act as unaffected by the growing concept of the term "cotton fabrics" in the Central Excises and Salt Act. We feel too, that unless the extended definition of the Central Excises and Salt Act is imported into the Sales Tax Act, the latter Act would become unworkable and ineffectual.

15. Then in paragraph 8 of the report, the Supreme Court proceeded to hold thus:

But these factual or periodical variations do not detract from the basic reality that the policy of sales tax levy on declared goods has to keep in view, and be influenced by, the provisions of the CST Act and the 1957 Act. The reference to the 1944 Act definitions for purposes of grant of exemption in the 1963 Act as enacted originally as well as when the latter was amended in 1967 and the specific reference to the 1957 Act when the First Schedule to the 1963 Act was amended in 1980 are quite significant in this context. We, therefore, think that, though the 1963 Act referred only to the definitions in the 1944 Act, the entire in the Schedule have to be juxtaposed into the board pattern or scheme evolved by the 1956-57 enactments set out earlier in the judgment. Doing so, and even assuming that the reference in the items of the Schedule to the definitions in the 1944 Act is by way of incorporation and not reference, one cannot escape the conclusion that the circumstances are covered by the exceptions outlined in *The State of Madhya Pradesh Vs. M.V. Narasimhan*,

16. The legal principle, thus, culled out in the case of *Attesee* when applied to the fact situation of the present case would lead us to hold that the exemption notification dated 6th March, 1978, particularly item 10 of the Schedule appended thereto shall include the amended item 10 of the Schedule. It would be un-realistic or impracticable not to read the amended item 10 of the Schedule for the purpose of the exemption notification dated 6th March, 1978.

17. We are, thus, of the view that the decision of the Tribunal does not call for any interference.

18. By way of foot-note we may observe that the tax effect in the present case for the year 1979-80 is about Rs. 2,897/- and for the year 1980-81 is Rs. 1,613/-. The State Government could have been well advised not to incur on this avoidable litigation having such a lox tax effect.

19. The writ petition is consequently dismissed.

20. The parties shall bear their own costs.