
(2008) 08 OHC CK 0130
In the Orissa High Court
Case No : S.T. Rev. No. 354 of 2008

Baladev Sahu and Sons

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 5, 5A
Orissa Sales Tax Rules, 1947 — Rule 90AA

Citation : (2008) CLT 463 Supp : (2009) 22 VST 386

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.S. Chauhan, C.J.—In this sales tax revision the following questions have been raised by the assessee:

(a) Whether, in the facts and circumstances of the case, surcharge is leviable on compounding of tax on out-still liquor under Rule 90AA of the Orissa Sales Tax Rules, 1947 read with first proviso to Section 5 of the Orissa Sales Tax Act, 1947.

(b) Whether, in the facts and circumstances of the case, the findings of the learned Sales Tax Tribunal can be sustained in law?

2. The facts and circumstances giving rise to this case are that the petitioner is a registered dealer under the provisions of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, "the Act"). He is a manufacturer of out-still liquor in the district of Nuapada. In the course of its business the petitioner purchased mohua flowers for manufacturing out-still liquor as per the licence granted by the authorities of the Excise Department. The petitioner opted to pay compounding tax in respect of its business and payment of compounding tax is statutorily permitted as per Rule 90AA of the Orissa Sales Tax Rules, 1947 (hereinafter referred to as, "the Rules"). The assessing authority for the assessment year 2002-03 determined the sale turnover of country liquor of the petitioner at Rs. 16,38,000 being one-and-half times of the consideration money payable to the Government in the Excise Department for obtaining exclusive privilege licence

vide order of assessment dated May 16, 2003 (annexure 1). In addition to the tax paid as per the compounding agreement the assessee was asked to pay the surcharge and some other additions were also made by the assessing authority.

3. The petitioner, being aggrieved by the said order of assessment preferred an appeal before the Assistant Commissioner of Sales Tax, which was disposed of vide judgment and order dated October 31, 2003 (annexure 2) only by reducing the estimated purchase value of mohua flower and sustaining the rest of demand. The petitioner being aggrieved filed a further appeal before the Orissa Sales Tax Tribunal (hereinafter referred to, "the Tribunal") and the said appeal has been disposed of vide order dated January 27, 2008 (annexure 3). While granting relief regarding enhancement of price of mohua flower estimated by the assessing authority, the Tribunal held that the surcharge was to be recovered independently u/s 5A of the Act and therefore, it has to be over and above the tax paid by the petitioner under the compounding agreement. Hence this revision.

4. The learned Counsel for the petitioner submits that as the Revenue has agreed to accept the proposal made by the assessee for making the payment of tax in lump sum/compounding manner, surcharge cannot be recovered over and above the same and it is inclusive in it for the reason that the lump sum agreement is made on the amount of tax payable under the Act. It is submitted that the word "tax" does not bear any definition under the Act. The further expression "tax payable" used in different provisions of the OST Act except in Section 5A conveys an altogether different meaning, namely, tax including surcharge. Whereas, "tax payable" used in Section 5A indicates merely tax payable but not surcharge. "Tax assessable on taxable turnover" is therefore to be read as meaning tax and surcharge assessable on taxable turnover. "Surcharge" is payable on "tax payable" u/s 5A and "tax payable" is on taxable turnover as defined under Sections 5(2)(A) and 5(2)(AA) of the Act. Therefore, the further expression "pay in lieu of" denotes a quantifiable sum of money the payment of which discharges a dealer of his tax liability under Rule 90AA and the said amount which equates to 20 per cent of 1? times of the amount payable to Government (Excise Department) as a consolidated amount which cannot be understood to mean further levy of surcharge on the said amount. Therefore, the question has to be answered in favour of the assessee.

5. On the contrary Mr. Dalai, learned Counsel for the Revenue, has submitted that surcharge provided u/s 5A of the Act, which provides for surcharge is an additional tax and it is to be calculated at the rate of 10 per cent of the tax payable by the assessee u/s 5 of the Act. Therefore, the assessee cannot escape the liability of surcharge. Thus, the question has to be answered in favour of the Revenue.

6. We have considered the rival submissions and perused the record. In order to understand the issue involved herein it may be necessary to refer to relevant statutory provisions. Relevant parts of Section 5 and 5A of the Act and Rule 90AA of the Rules read as under:

Section 5. Rate of tax.--(1) The tax payable by a dealer under this Act shall be levied on his taxable turnover at such rate (not exceeding seventy-five per cent in case of liquor and twenty-five per cent in case of other goods), and subject to such conditions as the State Government may, from time to time, by notification, specify:

....

Provided that the State Government may direct that in such circumstances, and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of the tax assessable on his taxable turnover, a sum fixed in such manner as may be prescribed and in such a case the tax shall be deemed to have been compounded:

Provided further that a dealer, who is subject to payment of a sum fixed as aforesaid, may, by a written application to the prescribed authority made within the prescribed period, opt for being assessed in the usual manner under the provisions of this Act in respect of the year in which such option is exercised.

5A. Surcharge.--(1) Every dealer shall, in addition to the tax payable by him under this Act, also pay a surcharge at the rate of ten per centum of the total amount of tax so payable by him:

Provided that the aggregate of the tax and surcharge payable under this Act shall not exceed in respect of goods declared to be of special importance in inter-State trade or commerce by Section 14 of the Central Sales Tax Act, 1956 (74 of 1956), the rate fixed by Section 15 of the said Act.

(2) All provisions relating to the payment, assessment, recovery and refund of the tax under this Act shall, as far as may be, apply to the payment, assessment, recovery and refund of the surcharge.

(emphasis here italicised added)

Rule 90AA. Compounding of tax on out-still liquor.--A dealer who carries on business in outstill liquor and who is liable to pay tax under the provisions of the Act shall, with effect from the year 2002-03, pay in lieu of the tax assessable on his taxable turnover under the provisions of the Act, a sum equal to 20 per cent of one-and-one-half times of the consideration money payable to Government in the Excise Department for obtaining the exclusive privilege to vend such commodities.

8. It is evident from the aforesaid statutory provisions that Section 5 provides for tax payable by a dealer under the Act and it is to be levied on the taxable turnover at the rate fixed by the State authorities subject to certain conditions. The proviso thereto enables the Revenue and the asses-see to have a lump sum agreement for making the payment. Rule 90AA provides that a dealer carrying on the business of out still liquor and who is liable to pay tax on taxable turnover, may pay a fixed amount depending upon the amount paid by him as a

consideration to the Excise Department for obtaining the exclusive privilege to vend such commodities.

9. The Tribunal has given serious consideration to the issue agitated before us and it has held as under:

Question of surcharge has been raised in SA No. 2680 of 2003-04, SA No. 2681 of 2003-04 and it is urged by the appellants that they are not liable to pay surcharge as Rule 90AA is silent about levy of surcharge in addition to compounding tax on sale of out-still liquor paid by them under the said rule. We are of the view that Rule 90AA is confined to provision of Section 5 of the Act only and provides for a convenient and easy mode of quantification of tax on sale of out-still liquor. So far as surcharge provided u/s 5A of the Act is concerned the same stands for additional or extra charge or payment. It is a superadded charge and a charge over and above the usual or current dues. In view of such settled position the appellants are liable to pay surcharge at the admissible rate in addition to compounding tax paid by them on sale of out-still liquor in accordance with Rule 90AA of the Rules.

(emphasis here italicised added)

10. The findings recorded by the Tribunal are justified for the reason that in case the argument advanced on behalf of the assessee is accepted, the words contained in Section 5A itself become redundant and it does not require to be read in the manner the assessee pleads. The provisions of Section 5A make it crystal clear that surcharge is "in addition" to the tax payable by the assessee under the Act. "In addition" indicates that surcharge is additional/extra/superadded tax over and above the tax u/s 5 of the Act. In case it is accepted that the surcharge is inclusive and it has been agreed by the authorities in the compounding agreement the words "in addition" would become redundant.

11. It is a settled legal principle of interpretation of statute that no word is redundant and every word in a statutory provision is to be given an effective meaning after determining the intent of the Legislature.

12. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced as a "dead letter" or "useless lumber". An interpretation which renders a provision an exercise in futility, should be avoided, otherwise it would mean that enacting such a provision in legislation was "an exercise in futility" and the product came as a "purposeless piece" of legislation and provision had been enacted without any purpose and entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide Sri Ram Ram Narain Medhi Vs. The State of Bombay, , R.G. Jacob Vs. Union of India (UOI), , Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, , Anandji Haridas and Co. Pvt. Ltd. Vs. Engineering Mazdoor Sangh and Another, ,

The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, , Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow, , Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, , M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, , Sultana Begum Vs. Prem Chand Jain, , State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., , Institute of Chartered Accountants of India v. Price Waterhouse AIR 1998 SC 74, The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad Vs. The Registrar of Co-operative Societies and Others, , Subhash Chander Sharma and Another Vs. State of Punjab and Others, , Bharathidasan University v. All India Council for Technical Education AIR 2001 SC 2861, and The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another,).

13. The court has to be alive of the fact that while interpreting the provisions of a statute, it can neither add or subtract a word. Legal maxim "A Verbis Legis Non Est Recedendum" means from the words of law, there must be no departure. The said maxim was applied by the honourable Supreme Court in Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, , holding that a Section is to be interpreted by reading all its part altogether and it is not permissible to omit any part thereof.

14. In Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, the honourable Supreme Court has taken a similar view placing reliance on various judgments particularly Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 and Commissioner for Special Purposes of Income Tax v. Pemsel [1891] AC 531, wherein it has been held that the court cannot proceed with the assumption that the Legislature while enacting the statute has committed mistake; the court must proceed on the footing that the Legislature intended what it has said; even if there is some defect in the phraseology used by the Legislature, the court cannot add and amend or by construction, make up the deficiencies which are left in the Act.

15. In Sri Ram Ram Narain Medhi Vs. The State of Bombay, , the Constitution Bench of the honourable Supreme Court while considering a similar issue held as under:

...If the language of the enactment is clear and unambiguous, it would not be legitimate for the courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the Legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the Legislature....

16. In M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , the Constitution Bench again reiterated a similar view. However, it was observed that

the court can only iron out the creases but it must not alter the material of which the Act is woven, placing reliance upon the judgment in *Seaford Court Estates Limited v. Asher* [1949] 2 All ER 155.

17. A similar view has been reiterated by the apex court in *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*, .

18. In *S.P. Gupta Vs. President of India and Others*, , the issue was considered at length and it was held as under:

(5) Where the scheme of a statute clearly shows that certain words or phrases were deliberately omitted by the Legislature for a particular purpose or motive, it is not open to the court to add those words either by conforming to the supposed intention of the Legislature or because the insertion or the omission suits the ideology of the judges deciding the case. Such a course of action would amount not to interpretation but to interpolation of the statutory or constitutional provisions, as the case may be, and is against all the well established canons of interpretation of statutes. The main reason behind the principles enunciated above is that the Legislature must be presumed to be aware of the expanding needs of the nation, the requirements of the people and above all, the dominant object which the legislation seeks to subserve. Thus, where the language is plain and unambiguous the court is not entitled to go behind the language so as to add or supply omissions and thus play the role of a political reformer or of a wise counsel to the Legislature.

(emphasis here italicised added)

19. In *P.K. Unni Vs. Nirmala Industries and others* [OVERRULED], , the Supreme Court held that the court while interpreting the statutory provisions, cannot add words to a statute or read words into it which are not there especially when the literal reading produces an intelligible result. While deciding the said case, reliance had been placed on the judgment in *Crawford v. Spooner* [1846] 6 Moo.P.C. 1.

20. In *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, , the Constitution Bench of the Supreme Court considered the earlier judgments and concluded on the issue observing as under:

...The settled principles of interpretation are that the court must proceed on the assumption that the Legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the Legislature. Undoubtedly if there is a defect or an omission in the words used by the Legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the Legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

21. In view of the above; it becomes crystal clear that under the garb of interpreting the provision, the court does not have a power to add or subtract a word as it would not amount to interpretation but legislation.

22. The statute is not to be construed with certain notions of what the Legislature might have expected to have said or what the Legislature might have done. As the courts have to administer the law as they find, it is not permissible for the court to twist the clear language of the enactment to avoid the real or imaginary hardship in which it may result.

23. Making any generous addition to the language of the Act would not be a construction of the statutory provision rather would be an amendment thereof, (vide *Royal Trust Company v. Minister of Finance the Province of British Columbia* AIR 1921 PC 184).

24. The court has to proceed on the footing that the Legislature intended to what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein.

25. In view of the above, we are of the considered opinion that it is not permissible for the court to add or subtract any word from the statute while interpreting, as it may amount to legislation which is not permissible for the court.

26. In view of the above, the arguments advanced on behalf of the assessee are not acceptable. The words "in addition to the tax payable" contained in Section 5A make it crystal clear that surcharge is leviable under a different provision altogether as an additional/extra/superadded tax over and above the tax payable u/s 5 of the Act. Rule 90AA makes it evident that the payment of composite tax is only in lieu of tax assessable on the taxable turnover under the provisions of the Act. Therefore, Rule 90AA has an application only to the extent of the tax payable u/s 5 of the Act. Section 5A was added by amendment with effect from July 1, 1990. The Legislature has not given any indication that such payment will not be made where agreement for compounding exists. Therefore, we hold that surcharge u/s 5A is to be paid in addition to tax payable u/s 5 of the Act. Thus, the questions are answered in favour of the Revenue and against the assessee.

27. The sales tax revision is accordingly disposed of.

B.N. Mahapatra, J.

28. I agree.