(1999) 05 AHC CK 0079

In the Allahabad High Court

Case No : C.M.W.P. No''s. 23889, 24530, 24532 and 23890 of 1988

Bhatt Industries and others APPELLANT

Vs

Divisional Forest Officer, Almora and others RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Forest Act, 1927 — Section 2(4)
General Clauses Act, 1897 — Section 21
Stamp Act, 1899 — Section 2(10), 29, 3, 9

Citation : (1999) 3 AWC 2291 : (1999) RD 503

Hon'ble Judges : Yatindra Singh, J;Binod Kumar Roy, J

Bench : Division Bench

Advocate : Namwar Singh, for the Appellant;

Judgement

Yatindra Singh, J.—These four writ petitions are for restraining the respondents from charging or demanding stamp duty on instruments for auction sale of resin or by way of allotment on quota basis ; and for quashing of general letter dated 30.4.1983 requiring deposit of stamp duty. These petitions have similar facts and raise common questions of law and as such are being decided together. For the sake of convenience, the W. P. No. 23889/88, M/s. Bhatt Industries v. Divisional Forest Officer, is taken to be leading case and the reference to the facts annexures will be in respect of this case.

FACTS

2. Petitioners purchase resin from the forest department on the basis of quota allotment or auction sale. They enter into contract with the forest department,'' The stamp duty was payable on the same but was exempted under a Notification dated 25.3.1942. (''the earlier notification'' for short) issued u/s 9 of the Indian Stamp Act (''the Act'' for short). It was amended by another notification dated 14.1.1982 (''the subsequent notification'' for short). A letter dated 30.4.1983, addressed to the personnel of Public Works Department and Forest Department. was sent by Deputy Commissioner. Stamp, Bareilly. It says that in view of the

notification dated 14.1.1982. certain instruments, like present one, which were earlier exempted now require stamps and accordingly, the stamp duty may be charged. Petitioner challenges this letter. He prays that direction be issued to the respondents not to charge or demand any stamp duty in respect of contract of resin for auction sale or by way of allotment on quota basis.

POINTS FOR DETERMINATION

3. We have heard the counsel for the parties. Following points arise for determination.

(i) The subsequent notification was issued u/s 9 of the Act. This section is not the charging section. Whether the stamp duty can be imposed by a notification issued under that section?

(ii) Whether the duty on the contract is payable by the State. Can any duty be charged in view of proviso to Section 3(bb) of the Act?

(iii) Whether the limit of five thousand rupees qualifies six kinds of specific instruments mentioned in item No. 11 of the amended notification only or applies to general instruments mentioned in the same item? Whether the contract In question falls in the six specific instruments or under general Instruments mentioned in item No. 11?

(iv) In case we hold the third point against the State ; should the stamp duty be refunded? Should the guarantee of the petitioner in pursuance of stay order be realised in case he has not passed it on to the others?

1st Point--WHETHER THE NOTIFICATION DATED 14.1.1982 IMPOSES FRESH DUTY

4. It is true that Section 3 and not Section 9 of the Act is the charging section. The instrument in question is conveyance within the meaning of Section 2(10) of the Act. The stamp on it is payable in view of Section 3 read with entry 23 Schedule IB of the Act. The stamp duty was not being charged in view of the exemption under the earlier Notification. The Government has merely amended the same by subsequent notification dated 14.1.1982. The State Government has not imposed any fresh stamp duty by this notification. That was already there. A power to issue notification includes power to add, amend, vary or rescind. It is inherent in exercise of the power. Section 21 of the General Clauses Act clarifies it. The State Government could issue the subsequent notification. This point has no merit. Whether the stamp duty is no longer exempted is another question? We will deal with it at later stage.

2nd Point--STAMP DUTY-PROVISO TO SECTION 3(bb)

Who Has to Pay the Stamp Duty

5. The instrument in question is a conveyance. The stamp duty is payable under entry 23 of Schedule 1B. Section 29 of the Act envisages that the expense for the stamp shall be borne by the person in accordance with the terms of the

contract, in its absence, it is governed by clauses (a) to (g) of that section. In the present case, clause (c) is applicable. According to it, the stamp duty is to be paid by the grantee. It is admitted that petitioner Is the grantee. The stamp duty in case there was no exemption was payable by him. Even under the terms of the contract, petitioner has to pay the stamp duty. A form of the instrument for purchase of the resin is Annexure-1 to the writ petition. Petitioner is a buyer within the meaning of this contract. According to its conditions, the stamp duty and the registration fees is to be borne by the buyer.'' Petitioner has to pay the duty.

APPLICABILITY OF THE PROVISO

6. The proviso to Section 3(bb) merely exempts the State Government from liability to pay the duty, which the State Government was liable to pay under certain circumstances mentioned in Section 3. In the present case, the Government is not liable to pay the stamp duty. It is the petitioner who has to pay the stamp duty. This proviso has no application. This point has no merit.

3rd Point--WHETHER THE SUBSEQUENT NOTIFICATION TAKES AWAY THE EXEMPTION

7. The exemption is dealt under item number 11 of both notifications. This item is in two parts. One general conveyance of the forest produce In the Government forest and second-six other instruments specifically mentioned therein. Resin is forest produce. It is so defined in Section 2 (4) of the Forest Act. The contract in question is not one of the six specified contract/agreement mentioned in the second part, it is conveyance of the forest produce covered in the first part of the item No. 11.

8. There is one difference in the earlier and the subsequent notification. The earlier notification grants exemption in respect of all instruments mentioned therein and the subsequent notification grants only if the value is less than five thousand rupees. The instrument in question is more than five thousand rupees but does the limit of five thousand rupees apply to the specific six specific contract/agreement mentioned in the second part or to the all instruments. In case it applies to all, then all instruments will be liable to stamp duty if the value is more than five thousand rupees. In case it applies to the six specific con tract/ agreement in the second part, then the instruments falling in the first part will be exempt from stamp duty irrespective of their value. And the six specific contract/ agreement in second part will be exempt from stamp duty only if the value is less than five thousand rupees. The relevant part of the subsequent notification granting exemption is as follows :

"11. Instruments in the nature of a conveyance on behalf of the State of standing trees or any other forest produce in a Government forest ; and also the following instruments where the amount or value specified therein does not exceed five thousand rupees :

(i) Contract for collection of minor produce, barks, etc.

(ii) Contract for selling and removing trees ;

(iii) Contract for the purchase of timber or firewood to be felled or cut departmentally ;

(iv) Contract of the usufruct of trees and topes ;

(v) Contract for the felling or cutting and purchase of limber or firewood ; and

(vi) Agreement for felling and conversion of timber.

9. It is true that the use of the semi-colon after words Government Forest and before the words "and also" indicate that there is break in the two categories and the limit of Rs. 5,000 applies to the second category and not to the first category. But ''no doubt grammar is a good guide but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, justice Frankfurter used words of practical wisdom when he observed, "There is no other way to misread a document than read it literally". We do not wish to commit the same mistake.

10. It appears that there could be some doubt if the six specific instruments mentioned in the second category were already included in the first category or not. It is for this reason that in the earlier notification, they were specifically mentioned as a second category with the use of a semi-colon and the words ''and also'' which gives an inclusive definition to the first category. When the subsequent notification was issued, the intention was that limit of Rs. 5.000 should apply to the entire item No. 11. But the semi-colon continued as it was in earlier notification. Nothing turns upon it. If this was so, then we see no reason why the limit of Rs. 5,000 will not apply to the instruments mentioned in the first category. The State will do well to remove the ambiguity. In view of the fact that we have these points in favour of the State, the 4th point does not arise for consideration.

CONCLUSION

These writ petitions are dismissed with costs.

Let a copy of this order be placed in the record of Civil Misc. Writ Petition No. 24530 of 1988 : M/s. Lakshmi Varnish Udyog, Kulyalpar, Nainital v. Divisional Forest Officer and others :

Civil Misc. Writ Petition No. 24532 of 1988 ; M/s. J. P. Resin and Turpentines and others ; and

Civil Misc. Writ Petition Wo. 23890 of 1988 : M/s. Jageswar Resin v. Divisional Forest Officer and others.

