(2000) 03 BOM CK 0027

In the Bombay High Court

Case No : Civil Ref. No''s. 1, 5 and 6 of 1990

Chief Controlling Revenue Authority for The State of Maharashtra — APPELLANT

Vs

G. and J. Concerns (Hotel Samrat), Kolhapur — RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:
Bombay Stamp Act, 1958 — Section 9
State Financial Corporations Act, 1951 — Section 2

Citation : AIR 2000 Bom 403 : (2000) 3 ALLMR 606 : (2000) 4 BomCR 753 : (2000) 2 BOMLR 246 : (2000) 4 MhLj 212

Hon'ble Judges : N.J. Pandya, Acting C.J.;Vijay Daga, J;Ranjana Desai, J

Bench : Full Bench

Advocate : V.A. Gangal and A.G. Toraskar, Addl. Government Pleader, for the Appellant; Tejpal S. Ingale, S.M. Gorwadkar and V. Manandiar, for the Respondent

Judgement

N.J. Pandya, Actg. C.J.

1. All the three references are heard together and decided by common judgment as they involve same question of law as to whether the hotel can be considered to be an industrial undertaking within the meaning of notification dated 3rd November, 1972 issued u/s 9 of the Bombay Stamp Act, 1958. Other facts being admitted, we straightly go to this question.

2. The word industrial undertaking is in the said notification. In respect of that exemption is granted as also the small scale industrial undertaking which are covered by it. The explanation in the notification specifies that unless a certificate of small scale industrial undertaking is produced, mere claim of stamp duty exemption will not be accepted.

3. In each case, most of the finance assistance is obtained by the Maharashtra State Finance Corporation. The said corporation is one of the financial institutions whose transaction mortgaged by way of financial assistance are exempted by the said notification.

4. Ordinarily, therefore, one has to turn to the statute which brings about the said corporation into existence i.e. the State Financial Corporations Act, 1951. In it, there is definition of word ''industrial concern'' in clause (c) of section 2. It includes the hotel industry. The word hotel alone is not used but hotel industry is used and hotel industry is taken to be industrial concern in the definition of said clause.

5. As against that notification in question uses word as ''industrial undertaking''. Going by this usage, the referring authority in paragraph 8 of the compilation has stated that hotel is an industrial concern only for the purpose of financing loans. The hotel does not have which ordinarily to be found in an industrial concern dealing with manufacturing activities. In other words, having lands, machinery etc. with usual activities being found in the factory.

6. At the same time, hotel as an industry does involve providing of comfortable accommodation, rendering services to the occupants including food, etc. The last mentioned aspect i.e. food will require well established kitchen, catering to the need of the occupants of the hotel and for that there are manufacturing activities involved.

7. Thus understood the hotel as such would be nothing if it is understood to be an industry giving services in the form of comfortable accommodation kept and maintained reasonably clean and rendering other assistance by providing suitable staff to look after the comfort of the occupants and their immediate needs during their stay in that particular premises. When the boarding aspect is considered, preparation of food and its supply, as may be expected by the customers, will also have to be considered. All these activities will be involved in the hotel industry when there is lodging and boarding both.

8. Industry is an industrial concern engaged in manufacturing activities as per the Revenue. The Maharashtra State Financial Corporation, the transactions with whom are considered for exemption under the said notification is denied the exemption on the ground that it is available only to the industrial undertaking. Merely because there is no word "undertaking", in our opinion, should not make any difference whatsoever.

9. It can be seen for that purpose the Industries (Development and Regulation) Act, 1951 which contains definition of word "industrial undertaking" which means any undertaking as set out in the Schedule. The Schedule refers to a large variety of industries and no doubt the hotel is not included therein. But it refers to items like telecommunications, transportation and further items like size reduction equipment, mixer, machinery tools, agricultural fixtures, dies etc. Thus, the word industrial concern or undertaking, if it is to be understood in the light of various legislations covering different industries or industrial activities, it will be proper to bear in mind the meaning given in the Industrial Disputes Act, 1947.

10. Thus, when the policy of the State while exempting such industries is considered, the first objective being development of areas as set out in the

notification which are identified to be that part of the Maharashtra which requires special incentives for development and that too industrial development, the hotel industries being one supplying required infrastructure, in our opinion, shall be considered as industrial undertaking as contemplated by the notification.

11. The conventional idea of industry or an industrial undertaking of a noisy factories with workers moving around with tools in hand cannot be allowed to govern the interpretation of the notification as sought to be referred to above. The purpose of the policy of exemption being the development of the area and creation of job opportunities, the industrial undertaking would have to be given meaning to include the activities that achieve these results.

12. In our opinion, the word "industrial undertaking" as used in the said notification given on page 65 of the compilation (internal page 7) particularly with Schedule-I thereto will have to be read with the Maharashtra State Corporation which in turn contains the hotel industries. The definition of "industrial concern" thus interpreted would include any concern engaged in manufacturing activities and providing infrastructure for the same. Moreover, that the Corporation is intended to be benefited by the exemption under the notification, if interpreted otherwise, the purpose will be frustrated. The reference is, therefore, answered in the negative.

13. The amount of duty as demanded by the authorities, if paid with or without penalty, as the case may be, the entire amount is ordered to be refunded within four weeks from today.

