
(1982) 02 GUJ CK 0002
In the Gujarat High Court
Case No : Sales Tax Reference No. 21 of 1980

C.R. Sons and Co.

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 16-02-1982

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 2(10), 2(4), 31, 45(6)

Citation : (1982) 50 STC 12

Hon'ble Judges : D.H. Shukla, J;A.N. Surti, J

Bench : Division Bench

Advocate : S.L. Modi, for the Appellant; R.P. Bhatt, Assistant Government Pleader, for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Surti, J.—The following questions of law are referred to us by the Tribunal :

"(1) Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the transaction of sales of the disputed storage tanks for Rs. 75,000 in all was a transaction of sales of "empties" or of such other goods which is ancillary or incidental to" the applicant's principal trade, within the meaning of the relevant words used in the definition of "business" given in clause (ii) of section 2(4) of the Gujarat Sales Tax Act, 1969 and, therefore, it was the applicant's business, as so defined ?

(2) Whether, on the facts and in the circumstances of this case, the Tribunal was right in holding that the applicant had sold the above storage tanks in connection with its business and that, therefore, it was a "dealer" thereof as defined in section 2(10) of the Gujarat Sales Tax Act, 1969, and in accordingly including sale price of the above storage tanks amounting to Rs. 75,000 in the applicant's turnover of sales and in levying tax thereon ?"

2. In order to answer the questions of law referred to us by the Tribunal, a few relevant facts may be stated.

3. The assessee is having its business at Nadiad and is dealing in light diesel oil,

lubricant oil, kerosene, etc. The business was done by the assessee as an agent of M/s. Burmash Shell Company. The assessee was also working as a transport contractor and had used transport carriers known as tanker lorries for the business of transportation of lubricant oil, etc. In Samvat Year 2028, which was the period of assessment, the assessee had sold two transport carriers worth Rs. 76,001. The assessee had also purchased certain spare parts for the use as parts of those carriers which were estimated at Rs. 5,000. For the disposal of the present reference, the aforesaid facts are not very relevant.

4. But the assessee had sold storage tanks, five in number, at Rs. 75,000. These storage tanks were used for storing the oil which was emptied in these tanks as coming from the railway wagons. These tanks might have been sold, either because they were found unserviceable, or because the assessee might have found out a better way of storing, possibly in underground tanks.

5. The sales of tanker lorries and storage tanks were held to be business purposes. The purchases of spare parts of tanker lorries were also held to be business purposes. The tax payable on the respective sales and purchases was, therefore, assessed by the Sales Tax Officer, Anand, while assessing the assessee for tax of Samvat Year 2028.

6. It may be significantly noticed, that because there was difference between the amount of tax assessed and that of tax paid exceeded 20 per cent of the tax paid, penalty u/s 45(6) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act") was also levied.

7. Being aggrieved by the aforesaid order passed by the Sales Tax Officer, an appeal was preferred before the Assistant Commissioner of Sales Tax, Ahmedabad, but to no useful purpose in so far as the present reference is concerned.

8. Suffice it to say, that the learned Assistant Commissioner accepted the contention of the assessee that the tanker lorries were used for transportation business, and hence, the same was outside the purview and scope of the Act. The levy of tax on sales of lorries and purchases of spare parts of tanker lorries was held to be improper but tax on the sales of storage tanks was, however, confirmed on the ground that those sales were business sales. Under the aforesaid circumstances, no doubt the appeal filed by the assessee was partly allowed by the Assistant Commissioner of Sales Tax, Ahmedabad, but the appeal was partly dismissed by him also.

9. Under the aforesaid circumstances, the assessee had a grievance against the order of the Assistant Commissioner of Sales Tax, Ahmedabad, and had filed the second appeal before the Sales Tax Tribunal.

10. In substance, the submission on behalf of the assessee before the Tribunal was, that the sale of storage tanks was not business as held by the Assistant Commissioner of Sales Tax, Ahmedabad. In essence and substance, the

submission on behalf of the assessee before the Tribunal was that the sale of storage tanks will not be covered by the statutory definition of the word "business", and hence, the same will not be taxable.

11. It was also urged, that on a true reading of the two words which are statutorily defined in section 2(4)(ii), and 2(10) "business" and "dealer" respectively, it cannot be conceived, that the sale of storage tanks is business as statutorily provided in section 2(4)(ii) by a dealer as defined in section 2(10) of the Act. The Tribunal, having carefully considered the grievance of the assessee, took the view that the dealer had done the business in regard to storage tanks, and hence, whatever amount the assessee had obtained in regard to the sale of storage tanks is subject to taxation liability. Under the aforesaid circumstances, the Tribunal did not accept the appeal of the assessee, and dismissed the appeal, but referred the aforesaid questions of law to this Court.

12. At the time of the hearing of this reference Mr. Modi, the learned Advocate, who argued the reference with ability and thoroughness invited our attention to the statutory definitions of the terms (1) "business" and (2) "dealer".

"Section 2(4) "business" includes -

(i)

(ii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste products, or such other goods, or waste or scrap of any of them which is ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern; but does not include any activity in the nature of mere service or profession".

"Section 2(10) "dealer" means any person who buys or sells goods in connection with his business; and includes Central Government, a State Government or any local authority and also any society, club or other association of persons which buys goods from or sells goods to its members or to other persons; ..."

13. On a plain reading of the aforesaid two definitions of the terms, (1) "business" and (2) "dealer", we are convinced beyond any doubt, that this is not a case which involves interpretation or construction of any words which are patently or even remotely ambiguous. It is equally not possible for us to see any implications in the aforesaid two definitions. The two definitions are clear and not at all ambiguous in any manner whatsoever.

14. On a plain reading of the aforesaid definitions of the two terms, we are convinced beyond any doubt, that this is a case where the assessee had done some business in respect of empties, and that the empties had the connection with the business which was carried on by the assessee at the relevant time. The assessee was dealing in kerosene, light diesel oil, etc., as stated above, and they had to be stored up in tanks, and in the absence of any tanks or empties, it would have been impossible for the assessee to carry on his business. Under the

circumstances, it is very clear to us that the assessee-dealer was dealing with the goods, viz., storage tanks in connection with his business and, that being so, it is not possible for us to differ from the ultimate conclusion arrived at by the Tribunal.

15. But Mr. Modi, the learned Advocate, with his usual tenacity brought to our notice the report of the Select Committee on L.A. Bill No. 30 of 1969 from which Gujarat Sales Tax Act, 1969 has been drafted. In para 8 of the said report the Select Committee has observed as under :

"(8) Clause 2, sub-clause (4). The sub-clause defines the term "business". It inter alia includes any transaction in connection with or ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern. The Committee feels that the definition of "business" is rather too wide and requires to be restricted so that isolated transactions which are not closely connected with the business of a dealer are not made subject to payment of tax. The Committee also feels that the institutions and organisations which carry on activities in the nature of mere service or profession, such as banking company, non-professional services associations should not also be brought within the scope of the definition. Sub-clause (4) has, therefore, been re-drafted so as to make the intention quite clear".

16. When Mr. Modi invited our attention to the aforesaid report of the Select Committee, we requested Mr. Modi to satisfy us as to whether it would be proper for us to have a look at the observations made by the Select Committee before the Gujarat Sales Tax Act, 1969, was put on the statute book. We brought to the notice of Mr. Modi that the two aforesaid statutory definitions of the terms "business" and "dealer" do not suffer from the vice of ambiguity or any apparent confusion or any of a serious type of infirmity deserving some reconsideration at our hands, and hence, we requested Mr. Modi that unless he would satisfy us that this is a fit case where we should take into consideration the observations of the Select Committee, we would not consider the aforesaid observations made by the Select Committee for reading the aforesaid statutory definitions.

17. Our attention was invited in the course of the hearing to the following passage from "Principles of Statutory Interpretation" by G. P. Singh, 2nd Edition, 1975. At page 145 it is stated as under :

"The Supreme Court has, speaking generally, enunciated the rule of exclusion of parliamentary history in the way it is enunciated by English courts ... but on many an occasion, the court has used this aid in resolving questions of construction. Indeed the basis for the rigid view had already been laid by the Privy Council. Lord Watson, in delivering the opinion of the Judicial Committee, in an appeal which related to the Administrator General's Act, 1874, differing from the High Court, observed : "Their Lordships observe that the two learned Judges who constituted the majority in the Appellate Court, although they do not base their judgments upon them, refer to the proceedings of the legislature which

resulted in the passing of the Act of 1874 as legitimate aids to the construction of section 31. Their Lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British Legislature are under construction, are equally cogent in the case of an Indian statute".

18. At page 147 of the aforesaid book, it is observed as follows :

"The amendments considered during the progress of the bill have also been ruled out as inadmissible for purposes of construction of the Act. Patanjali Sastri, C.J., speaking for majority of the court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, observed : "It was urged that acceptance or rejection of amendments to a Bill in the course of parliamentary proceedings form part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the legislature when the language used in the statute admitted of more than one construction. We are unable to assent to this proposition. The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy, as it happened to be in this case, and without the speeches bearing upon the motion, it cannot be ascertained with any reasonable degree of certainty. And where the legislature happens to be bicameral, the second Chamber may or may not have known of such reason when it dealt with the measure." This principle was again referred to by the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . Bhagwati, J., speaking for the court observed that there is a consensus of opinion that the circumstances under which a particular word came to be deleted from the original Bill as introduced in the Parliament and the fact of such deletion when the Act came to be passed in the final shape are not aids to the construction of the terms of the statute. He, however, added a rider : "It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the legislature"

19. Our attention was also invited to N. S. Bindra's "The Interpretation of Statutes", Sixth Edition, 1975, at page 401, it is observed as follows :

"When exact and precise words are used, they clearly show the intention of the legislature and it is not open to the court to speculate as to what the intention of the legislature might be because a case not covered by the exact and precise words used by the legislature has arisen."

20. Our attention was also invited to "Craies on Statute Law", Seventh Edition. At page 66 it is observed as follows :

"After expounding the enactment, it only remains to enforce it, notwithstanding that it may be a very generally received opinion that it "does not produce the effect with the legislature intended", or "might with advantage be modified". The meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation : the primary duty of a court of law is to find the

natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute."

22. At page 67 it is also observed as follows :

""We do not", said Lord Denning in 1958, "refer to legislative history as they do in America, do not look at the explanatory memoranda which preface Bills before Parliament and we do not have recourse to the pages of Hansard. All the courts can do is to take judicial notice of the previous state of the law and of other matters generally known to well-informed people.""

23. It is also observed in the said book as follows at page 67 :

"Even though a court is satisfied that the legislature did not contemplate the consequences of an enactment, a court is bound to give effect to its clear language."

24. Mr. Modi, the learned Advocate for the applicant, in spite of the clear position in regard to the interpretation of the statute did invite our attention to the reported decision of the Supreme Court in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, and he particularly invited our attention to paragraphs 8 and 14 of the said judgment, but to no useful purpose. Even the propositions laid down in the said case do not run counter in any manner to what we have stated hereinabove.

25. In view of our aforesaid discussion, we must say, that in spite of our anxiety to see that a taxpayer is not saddled with any illegal pecuniary taxation liability, it was not possible for us to take into consideration the aforesaid observations made by the Select Committee, though they are taken by us on the record of the case.

26. This is a clear case where the assessee was carrying on business in light diesel oil, lubricant oil, kerosene, etc., as stated above. The aforesaid definition of the term "business" clearly includes any transaction of buying, selling or supplying plant,, empties,, or such other goods, or waste or scrap or any of them which is ancillary or incidental to or resulting from such trade, commerce, manufacture,

27. In the facts and circumstances of the case, either diesel oil, lubricant oil or kerosene had to be stored by the assessee, and the same was obviously stored in tanks known as storage tanks. After the use of the said tanks, the assessee could have either sold the same, or disposed of the same in any manner whatsoever, because they were not serviceable as stated above, but the fact remains that those storage tanks were obviously "empties", and hence, the facts of the present case, at once, attract the statutory meaning of the word "business" as defined in section 2(4)(ii) of the Act.

28. At this stage, we may hasten to add that even the statutory definition of the

word "dealer" as provided in section 2(10) of the Act also contemplates a situation that whenever a dealer buys or sells goods in connection with his business, the transaction in respect of such goods is obviously subject to taxation liability. Under the circumstances, we have not got the slightest doubt or hesitation in agreeing with the ultimate conclusion arrived at by the Tribunal.

29. But Mr. Modi strenuously urged us, that in the instant case, the expression "any transaction" appearing in section 2(4) of the Act does not and cannot include any casual transaction such as the sale of storage tanks in the present case, so as to attract the provisions of section 2(4)(ii) of the Act. He urged that in essence and substance, what was the business of the assessee? He urged that the business of the assessee was to carry on business in light diesel oil, kerosene, etc., and that being so, it will not be fair or proper to include the casual transaction in question for the purpose of taxation liability. Developing argument further, Mr. Modi also urged that though the transaction in question may have a remote or proximate connection in regard to the business of the assessee-dealer, it cannot be said that the assessee-dealer was selling the goods in connection with his business. In substance, Mr. Modi's submissions were centered round the said two points, and strongly urged that the transaction in the instant case was not business as statutorily defined by the Act, nor can it be said that in the instant case, the assessee-dealer was in any way selling goods in connection with the dealer's main business.

30. We have carefully considered the submissions urged by Mr. Modi, and we must frankly say that there is no title of substance or any ghost of substance in any of the arguments advanced by Mr. Modi. This is a clear case where the assessee was dealing with the transaction of selling empties or gods or "such other goods" as contemplated by section 2(4)(ii) of the Act, and hence it is not possible for us to read anything to the contrary from what we have stated hereinabove. We have given effect to the plain and natural meaning to the language employed by the legislature in section 2(4)(ii) of the Act. We may also emphasise at this stage that we have read the words "in connection" appearing in the definition of the term "dealer" in section 2(10) of the Act in its plain ordinary commonsense and parlance, and it is difficult for us to carve out any other meaning of the said words by any stretch of imagination, and hence, it was impossible for us even to countenance the submissions of Mr. Modi, particularly when there was no ambiguity either in section 2(4)(ii) or in section 2(10) of the Act.

31. In view of the aforesaid discussion, we need not detain ourselves any longer by referring to some of the authorities referred by the Tribunal.

32. In the course of the hearing of the reference, our attention was invited by Mr. Modi, that in the instant case, even the assessee has to pay some amount by way of penalty.

33. In the result, the questions which are referred are answered against the

assessee and in favour of the State. Having regard to the facts and circumstances of the case, we make no order as to costs.

34. Reference answered accordingly.