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In the Gauhati High Court

Case No : Writ Petition (C) No''s. 839 of 2010, 2783, 2784 and 4324 of 2011

Excellent Gravure Industries APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:
Assam Entry Tax Act, 2008 — Entry 28

Citation : (2013) 2 GLD 336 : (2012) 56 VST 129

Hon'ble Judges : A.K. Goel, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ashok Saraf, D. Baruah, Miss. N. Hawelia, Ms. M.L. Gope, S. Chetia and A. Goyal, for the Appellant; D. Saikia, for the Respondent

Judgement

N. Kotiswar Singh, J.—These petitions have been preferred challenging the clarificatory order dated December 19, 2009 passed by the Commissioner of Taxes, Assam, as well as the show-cause and recovery notices issued to the petitioners on the basis of the aforesaid clarificatory order dated December 19, 2009 levying entry tax at four percent under the Assam Entry Tax Act, 2008. The impugned clarificatory order dated December 19, 2009 and the show cause and recovery notices revolve round the interpretation of entry No. 28 of the Schedule attached to the Assam Entry Tax Act, 2008, which is taxable at four percent, which reads as "films of all kinds including X-ray films".

2. In W.P. (C) No. 839 of 2010, the petitioner therein had sought for a clarification from the Commissioner of Taxes as to whether the items, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film which the petitioner firm had been importing to Assam would be taxable under the Assam Entry Tax Act, 2008 under entry 28. The Commissioner of Taxes by the impugned clarificatory order dated December 19, 2009 held that the aforesaid items are liable to be taxed at four percent as they are covered by entry No. 28. The petitioner in the said W.P. (C) No. 839 of 2010 has challenged the said clarificatory order dated December 19, 2009.

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3. Based on the aforesaid clarificatory order dated December 19, 2009, the Superintendent of Taxes conducted search and seizure in the business premises of various firms and served them with the show-causes as to why in addition to the realisation of taxes, penal proceeding should not be initiated against the petitioners for non-payment of the entry tax under the aforesaid Act of 2008 which are being challenged separately in this batch of writ petitions, W.P. (C) No. 839 of 2010, W.P. (C) No. 2783 of 2011, W.P. (C) No. 2784 of 2011 and W.P. (C) No. 4324 of 2011.

4. As similar issues are involved in these writ petitions, these are heard together and disposed of by this common judgment and order.

5. Under the Assam Entry Tax Act, 2008, taxes on entry of specified goods into local area for consumption, use or sale therein at the rates specifically specified against each item in the schedule are leviable.

6. Goods to be taxable under the said Act are notified in the Schedule attached to the Act and the rate of taxes against each item is also mentioned. The relevant scheduled entry No. 28 of the Assam Entry Tax Act, 2008 reads as follows:

Entry No. 28: Films of all kinds including X-ray films.

7. The case of the petitioners is that the aforesaid entry has no nexus with the articles, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film which are being imported by the petitioners to Assam as these are totally different items having no nexus with the item "X-ray films" and/or "films of all kinds". Further, it has been contended that if the intention of the Legislature was to include films of all kinds in the said entry, there was no necessity of adding the words "including X-ray films" after the words "films of all kinds". The inclusion of the said words "including X-ray films" makes it clear that the real intention of the Legislature was to include only such films which are of the nature of X-ray films and not to tax all kinds of films. Therefore, only such goods which are in the nature of X-ray films can be included within the purview of the said entry and since the aforesaid goods imported by the petitioners are totally different in nature from "X-ray films", the said entry cannot cover those articles.

8. According to the petitioners, the aforesaid articles, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film are "web substrate" and are not films. The said materials are used mainly for packaging of food articles like biscuits, bread, chocolate, etc. The petitioners clarify that metallised BOPP means metallised biaxially oriented polypropylene web (BOPP) which is used for packaging and food contact applications. Aluminium foil is used for packaging purpose as well as in pharmaceuticals and poly films are ideal for food packaging. They have other applications in construction and agricultural uses. The aforesaid articles, for their various uses, are sometimes printed and in order to increase the strength, are toughened by multi-layering and the aforesaid

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items cannot be considered as films in any sense of the term. It has also been stated that except aluminium foil, the aforesaid products are cleared under the excise laws as different items and are not included under "films". According to the petitioners X-ray films are taxable under the Excise laws under Chapter 370110 and Metallised PET (BOPET) are taxable under Tariff heading 39206220, PE (Poly)-Plain under 39201012, Metallised BOPP under 39202020, Aluminium foil under 76071991 and BOMPET under 39219093.

9. The petitioners contend that even if these materials are treated as "films", the use of the word "including" in entry 28 makes it clear that it is to take within its sweep only such items which are included within the defined term and therefore the films of all kinds must include items which are X-ray films and/or of the nature and kind of X-ray films and the aforesaid materials are not even remotely connected with X-ray films.

10. On the other hand, the contention of the respondents is that the entry uses the words "of ail kinds" which clearly indicates that the words "film of all kinds" wall cover all kinds of films and as such, it is not necessary that the said item may be similar in nature to X-ray films. The aforesaid items being films, therefore, are covered by the aforesaid entry and the said entry cannot be qualified by the words "X-ray films". It was thus contended that had the legislative intent been to tax only X-ray films of various kinds as the petitioners seek to assert, the entry would have straightaway mentioned as "all kinds of X-ray films" instead of the present enumeration "films of all kinds including X-ray films".

11. Therefore, the issue to be decided by this court is whether the aforesaid items, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film are covered by entry No. 28 of the Assam Entry Tax Act, 2008, i.e., "films of all kinds including X-ray films" making these liable to be taxed.

12. It is now well-settled that taxing statutes must receive strict interpretation and there cannot be taxation by implication and there must be clear and express language imposing tax. Further, the intent of the Legislature is to be gathered from the words used in the statute and once it is shown that the assessee falls within the letter of law, he must be taxed howsoever great the hardship it may appear to be.

13. On a cursory glance of the entry, it would appear that films of any kind or nature would be covered by the aforesaid entry. Thus the aforesaid items, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film, if they are to be understood as films would be apparently covered by the said entry. However, the problem has arisen because of the use of the words "including X-ray films" in the said entry. As discussed above, the Revenue has taken the stand that use of the said words is by way of abundant caution, merely to emphasise the comprehensiveness of the scope of the entry so as not leave out any kind of film including X-ray film and as such., any item which can be

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considered film even if does not bear any common element with X-ray film is liable to be taxed. According to them it is merely clarificatory and does not restrict the scope of the entry. On the other hand, the petitioners have claimed that the expression "films of all kinds" has been qualified by the use of the words "including X-ray films" to mean only those films which are in the nature of X-ray film and does not contemplate any other or all kinds of films.

14. As we proceed to examine the rival contentions of the parties, as to whether the meaning of the word "films of all kinds" has been expanded or restricted by the use of word "including", we may note the meaning of "film" first.

15. In the Assam Entry Tax Act, 2008, the word "film" has not been defined. Therefore, we may try to understand the meaning of the word "film" by referring to the dictionary meaning as understood in the common parlance as held by the Supreme Court in S. Samuel, M.D., Harrisons Malayalam and Another Vs. Union of India (UOI) and Others, , that when a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance.

16. As per Oxford Dictionary, the meaning of "him" is "Film:--

1. Thin coating or covering layer,

2. Strip or sheet of plastic, etc., coated with light sensitive emulsion for exposure in a camera,

3a. A story, episode, etc. on film with the illusion of movement.

3b. The cinema industry

4. Slight veil or haze etc.

5. Dimness or morbid growth affecting the eyes

--v. 1 make a photographic film of (a scene, story, etc.) 2. Cover or become covered with or as with a film. [Old English].

17. From the above definition, when one uses the word "film" referring to a substance, it would normally mean either a thin sheet of any material used to cover another material or any strip or sheet of plastic coated with photo sensitive materials used for photographic or cinematographic purposes. Thus the word "film" can mean two different substances. According to the first definition, any thin material which is used to cover any other material can be considered a "film". However, this definition is too amorphous and omnibus and devoid of any specific characteristic except the fact of the material of being a thin substance. Other than this characteristic of thinness of the material, nothing else is discernible regarding the character of the material from the first meaning of the word "film". In this connection we may observe what the Supreme Court held in Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills, :

The well-known rule in interpreting items in statutes like the one we are

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concerned with is that ''resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense....

18. Therefore, if we ignore the scientific or technical aspect of the meaning of the word "film" and go by the popular meaning of the word "film", it normally refers to the photosensitive thin plastic material which is used for the purpose of photography or cinematography and not to any other substances. Therefore, even if the aforesaid articles, namely, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film are considered to be films in technical and scientific terms, it is to be ascertained whether they are also known as "films" in the market or in the popular parlance so as to be unambiguously covered by the said entry. However, as regards whether these materials are also known as "films" in popular parlance, there is no such finding by the authority in the impugned clarificatory order dated December 19, 2009.

19. We now proceed to consider as to the effect of the use of word "including" after the words "films of all kinds" in the aforesaid entry No. 28.

20. In N.D.P. Namboodripad (Dead) by LRs. Vs. Union of India (UOI) and Others, , the Supreme Court held that:

18. The word ''includes'' has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word ''include''. Webster''s Dictionary defines the word ''include'' as synonymous with ''comprise'' or ''contain''. Illustrated Oxford Dictionary defines the word ''include'' as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word ''includes'' as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word ''include'' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word ''includes'' is also used to connote a specific meaning, that is, as ''means and includes'' or ''comprises'' or ''consists of.

21. From the above, what one notices is that when one uses the word "includes", it can be used as a word of enlargement and also to connote a specific meaning. What may further be noted is that when this word "includes" is used, it indicates that there is some commonality, certain common attribute or characteristic between the thing that is included and that to which the thing is included.

22. The use of the word "includes" has received further consideration in a number of decisions of the Supreme Court. We may refer to some of these. The Supreme Court in Karnataka Power Transmission Corpn. and Another Vs. Ashok Iron Works Pvt. Ltd., , had observed as follows:

14. The learned counsel also submitted that the word ''includes'' must be read as

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''means''. In this regard, the learned counsel placed reliance upon two decisions of this court, namely; (1) The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, and (2) Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, .

15. Lord Watson in Dilworth v. Commr. of Stamps [1899] AC 99 made the following classic statement (AC pages 105-06):

...The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

16. Dilworth [1899] AC 99 and few other decisions came up for consideration in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, and this court summarised the legal position that (Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others,) inclusive definition by the Legislature is used:

32. ...(1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names.

17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word ''includes'' by the Legislature often shows the intention of the Legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word ''includes'' may have been designed to mean ''means''. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word ''includes'' for the purposes of such enactment.

23. We may also refer to the decision of the Supreme Court in The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, wherein the Supreme Court held that:

3. ...It is true that ''includes'' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to the often

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quoted observation of Lord Watson in Dilworth v. Commissioner of Stamps [1899] AC 99, that when the word ''include'' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute

these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

Thus where ''includes'' has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that ''includes'' as used in the Explanation to entry 22 has that extending force. The Explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine ''articles of pottery'' specified in the Explanation. If the objects specified are also ''articles of pottery'', then these objects are already comprised in the expression ''potteries industry''. It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

24. The Supreme Court in the said case of The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, repelled the argument advanced that use of the expression "includes" was by way of abundant caution.

4. We are also unable to agree with Mr. Patel that the articles specified in the Explanation may have been mentioned out of abundant caution to emphasize the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractories or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the Explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well-recognised articles of pottery makes it plain that the Explanation was added to the entry not by way of abundant caution.

5. The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the Explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the Legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of Explanation. To this Mr. Patel''s reply is that it is well-known that where the Legislature wants to exhaust the significance of the term defined, it uses the word ''means'' or the expression ''means and includes'', and that if the intention was to make the list exhaustive, the Legislature would not have used the word ''includes'' only. We do not think there could be any inflexible rule that the word ''include'' should be read always as a word of extension without reference to the context....

25. From the above decisions of the Supreme Court, we may infer the following

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as regards the use of the word "includes" or "including" in any statute.

(i) The word "includes" or "including" is normally used in any statute to enlarge the scope of the definition or expression to include things that would not properly fall within its ordinary connotation. In other word, it is used as an extensive word.

(ii) However, depending on the context, it can be also used to give an exhaustive or restrictive meaning. It may be taken as equivalent to "means" and also "means and includes".

(iii) The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment.

26. In the present case, the words "X-ray films" would normally be covered by the words "films of all kinds" and as such, there was no need to specifically mention "X-ray films" again in the said entry. The expression "films of all kinds" in its sweep would normally take into account any kind of film including "X-ray film". Therefore, it is clear that the word "including" has not been used as an enlarging or extensive word, for it could not have been the intention of the Legislature to include something which in normal course would already stand included. The contention of the respondent authorities that the said word "including" has been used as an abundant caution to emphasis the fact that "X-ray films" have been included to clarify that nothing should be left out from the all inclusive and comprehensive character of the expression "films of all kinds", stands repelled in view of the decision of the Supreme Court in The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, .

27. Therefore, we have to understand the intention of the Legislature in using the said expression "including X-ray films" in the entry. Admittedly, we are concerned with a taxing statute and by the use of the words, "films of all kinds" the intention of the Legislature was to tax films of all kinds and not restrict to any particular kind of film which is clear from the use of words "of all kinds". Yet by adding the words "including X-ray films" to the expression "films of all kinds", the said expression stands qualified. It is evident that the Legislature intended to restrict the scope of the expression "films of all kinds" by adding these words "including X-ray films". We have already seen that the word "includes" apart from its use an enlargement word, can be understood as "means" and also "means and includes". However, if the expression "films of all kinds" is to mean only "X-ray films", it will reduce all the other words in the entry, (except "X-ray films") redundant. Therefore, it cannot be understood to mean only "X-ray films". As held in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , it can be used to include meanings about which there might be some dispute or to bring under one nomenclature all transactions possessing certain similar features but going under different names. The word "including" could indicate the restrictive meaning of the expression "films of all kinds" to

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confine to such materials which possess certain similar characteristics to the included material "X-ray films". The ambiguity of the all sweeping words "films of all kinds" could be clarified by the subsequent words. We have already observed that "film" can mean different things depending on the nature of the material.

28. In the light of the judgments referred to above, what we can legitimately infer is that by using the word "including" in entry 28, the Legislature did not wish to include an article which would normally be covered by the general terms "films of all kinds" but to give an exhaustive meaning to the words "films of all kinds" by clarifying and indicating the nature of him by referring to X-ray films. In doing so, the substances covered by the expression, "films of all kinds" would possess such characteristics which are also discernible in "X-ray films". Thus, the words "films of all kinds" would envisage only those films which also possess certain characteristics as discernible in an X-ray film. As to what are the attributes of "X-ray films" we may refer to the meaning of "X-ray".

29. X-ray, as per Oxford dictionary, means "X-ray--electromagnetic radiation of short wavelength, able to pass through opaque bodies. 2 photograph made by X-rays, esp. showing the position of bones, etc., by their greater absorption of the rays.--v. photograph, examine, or treat with X-rays. (X, originally with ref. to the unknown nature of the rays).

30. The aforesaid definition of "X-ray" in juxtaposition with the word "him" would clearly indicate the photosensitive character of the film material.

31. The expression "X-ray films", therefore, would act as the indicator of the nature of the kinds of films contemplated under the expression "films of all kinds". Therefore, the words "films of all kinds" would be such films which possess any of the characteristics or attributes of "X-ray film", i.e., photosensitive material; and not any other film which does not possess such character. The kinds of films which would be covered by entry 28 would be only those films which have certain photosensitive materials. It will cover all those films possessing certain characteristics which may be also found in "X-ray film" but going under different names. This corresponds to the second definition of "film" as discussed above. In view of the above, "films of all kinds" referred to in entry 28 would be the films which possess photosensitive elements in them.

32. In the present case, as observed before, the articles, polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film do not possess any such photosensitive chemical or substances which would qualify them to be treated as films under entry 28 and accordingly, these substances cannot be covered under entry 28 and not liable to be taxed under the said entry. In the result, for the reasons discussed above, we are of the view that the clarificatory order elated December 19, 2009 cannot be sustained and accordingly, set aside. Resultantly, all the consequential show cause and recovery notices issued to the petitioners on the strength of the clarificatory order dated December 19, 2009 holding the articles, polyester film, metallised pet, metallised BOPP, aluminium

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foil film and poly film as films within the sweep of entry 28 are liable to be recalled and accordingly, are recalled.

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