

(2011) 09 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1533 of 2011

Gwalior Trade Fair Authority

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Constitution of India, 1950 — Article 246, 265, 268A
Finance Act, 1994 — Section 65, 65(105), 65(16), 76, 77
Gwalior Vyapar Mela Pradhikaran Adhiniyam Act, 1996 — Section 10, 2, 3, 7, 8
Income Tax Act, 1961 — Section 41, 6

Citation : (2012) 1 MPHT 473

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Arvind Dudawat, for the Appellant; K.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Petitioner has filed this petition against the order dated 30-4-2010 (Annexure P-14), passed by the Assistant Commissioner, Central Excise Division, Gwalior, and the order dated 21st October, 2010 (Annexure P-15) passed by the Commissioner (Appeals) Customs, Indore. The petitioner is an Authority, constituted under the provisions of the Gwalior Vyapar Mela Pradhikaran Adhiniyam, 1996, hereinafter referred to as the "Act of 1996". Since last more than a century, near about 105 years, an Annual Mela is being organised in the city of Gwalior. Initially, it was in shape of "cattle-fair", however, in the year 1930 the concept was changed and general fair was organised so the people buy various items of consumption and some entertain can also be provided to persons during their visit at Mela. Ex-Ruler of the Gwalior State earmarked certain land for the purpose of holding the Mela. Since its inception the land has been used exclusively for Mela (Fair) and the place is known as "Mela-ground". After merger of the erst-while Gwalior State in the State of Madhya Pradesh, the State of Madhya Pradesh had been organising the Mela. In order to make effective control in organising the Mela the State Legislature

enacted an enactment, named as the "Gwalior Vyapar Mela Pradhikaran Adhiniyam, 1996", which received the assent of the Governor on the 28th December, 1996. The object of enactment of the Act of 1996 was to provide better management and control over the "Gwalior Trade Fair". Section 2 of the aforesaid Act defines "Authority" and "Trade Fair", which is as under :-

2. Definitions.- In this Act, unless the context other requires,-

(i) "Authority" means the Gwalior Trade Fair Authority constituted u/s 3;

(ii) "Trade Fair" means trade, industrial, agricultural, cattle fairs or any other fair as may be specified by the State Government from time to time held at Gwalior trade fair area.

2. Section 3 of the Act of 1996 prescribes "Constitution of Gwalior Traded Fair Authority" and the object of constitution of Authority is to manage and control the trade fair. Section 6 thereof prescribes management and control of the Trade Fair; which is as under :-

6. Management and control of the Trade Fair.- As soon as the Authority constituted by the State Government u/s 3, the management and control of the Gwalior Mela and the assets and liabilities, if any, of the Gwalior Mela Committee managing the Gwalior Mela at the time of constitution of the Authority together with all funds, if any, shall pass on and be vested in the Authority.

3. Section 10 of the Act of 1996 prescribes "Fund of the Authority" and Section 7 prescribes "Levy of Rent by the Authority. As per this section the Authority is authorized to levy rent for the land comprised in the area. Section 8 of the Act prescribes "Power to grant licence", which is as under :-

8. Power to grant licence.- The Authority may prescribe fees on ayment of which and conditions subject to which any person or class of person may be licensed to ply any profession, trade or calling in the trade fair during the period of trade fair.

From perusal of Section 8, quoted above, it is clear that Authority can prescribe lees on account of grant of licence to ply any profession, trade in the trade-fair during the period of trade-fair.

4. After enactment of the Act of 1996, the petitioner, who is an "Authority" constituted u/s 3 of the Act of 1996, has been controlling the trade-fair at Gwalior city. In the course of the aforesaid Act, it allots parcels of the land to various companies/individuals and Government departments, who puts their stalls in the Mela. The Government departments used to exhibit the activities of the concerned departments so the general public can get information about the activities of the departments. There is also a separate place where the entrepreneur of Small Scale Industries from various States of the country used to come and display their products. For the aforesaid purpose the Central Government and the State Government have also been providing some incentives. The Authority also issues licences to exhibit or sale the products in

the Trade Fair to various companies, their agents and individuals. There is also some area for entertainment of citizens who used to visit trade-fair.

5. On 7-12-2004, Assistant Commissioner, Customs and Central Excise issued a show-cause notice to the petitioner mentioning that the petitioner is in a business of "Event Management", hence, in accordance with the provisions of Finance Act, 1994, as amended, the petitioner is liable to pay service tax. Some information was also sought from the petitioner. The petitioner replied the show-cause notice and submitted information. The petitioner specifically stated that it was not in the business of "event management", hence, no tax is leviable on the petitioner. Thereafter, another notice was issued to the petitioner on 17-2-2005 by the Superintendent, Central Excise (Service Tax), Gwalior, mentioning the fact that petitioner is in the business of "Business Exhibition Services" as defined u/s 65 of Chapter V of the Finance Act, 1994, hence, petitioner is liable to pay service tax.

6. Petitioner in reply to the aforesaid notice denied the fact that activities of the petitioner did govern under the "Business Exhibition Services" as defined u/s 65 of Chapter V of the Finance Act, 1994. Petitioner further contended that it is not liable to pay service tax.

7. Then, the petitioner filed a petition before this Court, which was registered as Writ Petition No. 22031/2006. This Court vide order dated 13-3-2007 disposed of the petition with a direction that the Authority shall decide first that whether activities of the petitioner are under the category of "Business Exhibition Services". Thereafter, petitioner submitted a detailed representation before the Authority. The Assistant Commissioner, Central Excise Division vide impugned order dated 30-4-2010 (Annexure P-14), has held that the services provided by the petitioner are covered under "Business Exhibition Services" defined u/s 65 (19a) of Chapter V of the Finance Act, 1994. Consequently, the Authority imposed a tax of Rs. 14,86,550/- against the petitioner for the period 2004-05. The petitioner was also held liable to pay penalty of Rs. 1000/- u/s 77 and penalty of Rs. 200/- per day u/s 76 of the Finance Act, 1994.

8. Against the aforesaid order petitioner preferred an appeal before the Commissioner (Appeals), Customs (Central Excise and Service Tax), Indore. The Appellate Authority vide impugned order dated 21st October, 2010 (Annexure P-15) dismissed the appeal.

9. Learned Counsel for petitioner has contended that petitioner is an instrumentality of the State and it is only managing the fair, which has been organised every year for the last 105 years. It is not getting any profit from its activities and the activity of petitioner is only to manage the fair and it is a part and parcel of the activities entrusted to the State Government. The land, which is being used for trade-fair, is of ownership of the State Government, hence, petitioner is not liable to pay service tax u/s 65 (19a) of Chapter V of the Finance Act, 1994.

10. Contrary to this, the learned Counsel for the department has contended that activities of the petitioner are governed under the "Business Exhibition Services" as defined under the Finance Act, 1994, hence both the Authorities have rightly held that petitioner is liable to pay service tax.

11. Service Tax has been imposed on selective services since 1994. however, in the Finance Act of 1994 the word "Service" has not been defined. The tax was first introduced by the then Union Finance Minister in the year 1994-95 and he in his speech before the Parliament stated that "There is no sound reason for exemption from tax. I, therefore, propose to make modest effort in this direction by imposing a tax on service on Telephones, Non-life Insurance and stock brokers. It was enacted under the powers conferred under Article 246 (read with Entry 97 of List I) of Seventh Schedule to the Constitution.

12. Hon"ble the Supreme Court in the case of All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, upheld the constitutional validity of Finance Act, 1994 and held that the Parliament has absolute jurisdiction and legislative competence to enact the law imposing tax on services under Entry 97, List I of Seventh Schedule to the Constitution. The Hon"ble Supreme Court further held, as under, in regard to service tax :-

8. As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Therefore, for our understanding, broadly "services" fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandapwalas, etc. Performance based services are services provided by service providers like stockbrokers, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents, etc.

9. The Government of India in order to tap new areas of taxation and to identify the hidden ones appointed Tax Reforms Committee under the Chairmanship of Dr. Chelliah in August, 1991. The recommendations made by the Committee were accepted and the service tax was introduced in the Budget for 1994-1995 through the Finance Act, 1994. Under the said enactment, service tax is the tax on notified services provided or to be provided. After its introduction, the constitutional validity of the services taxed by the Central Government was challenged before the Constitution Bench of this Court, which took the view that the Central Government derived its authority from Entry 97 of List I of the Seventh Schedule to the Constitution for levying tax on services provided.

10. To provide necessary legal backup, the Government introduced a new Article 268-A in the Constitution in the year 2003 by the Constitution (Eighty-eighth Amendment) Act, 2003, which provides that taxes on service shall be charged by the Union of India and shall be appropriated by the Union of India and the States. A new Entry 92-C was also introduced by the Union List for the levy of

taxes on services. Section 65 (16) of the Finance Act, 1994 provided for definition of "taxable service" to mean any service provided by stockbroker, telegraph authority, and by insurer. Section 67 provided for valuation of taxable service based on gross receipts. In cases where value of taxable service could not be decided then the cost of providing the service constituted the basis of the assessable value of taxable service.

11. At this stage, we may state that the above discussion shows that what was the economic concept, namely, that there is no distinction between consumption of goods and consumption of services is translated into a legal principle of taxation by the aforesaid Finance Acts of 1994 and 1998.

13. From the aforesaid judgment of Hon"ble the Supreme Court, it is clear that the service tax is on value addition by rendition of services. Hon"ble the Supreme Court further held that now there is no distinction between consumption of goods and consumption of services, which is translated into a legal text by the aforesaid statute. Finance Act of 1994. Section 65 (19A) Chapter V of the Finance Act, 1994, defines "business exhibition", which is as under :-

(19A) "business exhibition" means an exhibition,-

(a) to market; or

(b) to promote; or

(c) to advertise; or

(d) to showcase,

any product or service, intended for growth in business of the producer of such product or service, as the case may be.

Explanation :-For the removal of doubts, it is hereby declared that for the purposes of this clause "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems.

14. Section 65 (105) (zzo) of the Finance Act, 1994 defines "taxable service on business exhibition service", which is as under :-

(105) "taxable service" means any service provided or to be provided.....

(zzo) to an exhibitor, by the organiser of a business exhibition, in relation to business exhibitions.

15. Subsequently, the department also issued circular No. 80/10/2004-ST, dated 17th September, 2004 and further explained "business exhibition service", which is as under :-

4.1. Business exhibition service is a service rendered to an exhibitor by an organiser of a business exhibition that intends to market, promote, advertise or show case products or services for growth in business of the producers or providers of such products or services. Thus, organisers of events such as trade fairs, road shows, fashion shows, display showcases kept in airports, railway stations, hotels etc. would be covered under this new levy. A display of consumer goods in shops or shopping centers for customers to select and purchase would normally not attract any service tax, as normally no separate charges are collected by the shop-keepers for displaying such goods. However, in case an amount is collected for merely displaying an item, the same would be chargeable to service tax.

4.2. While event management service (a currently taxable service) also relates to organising such events, but in that case, the services are rendered to the organiser by an event manager in relation to planning, promoting organising etc. Thus, an organiser of a business exhibition is not covered under Event Management Services, but would be covered under the new levy on "Business Exhibition Services". Similarly, while services rendered in relation to a circular, label, documents, hoardings or any other audio visual representation of a product or service falls under "advertisement services" the services relating to actual exhibition or display of the product or services would fall under the category of "Business Exhibition Services".

16. Further by way of circular No. 96/7/2007-ST. dated 23-8-2007, the CBEC explained "trade-fair and exhibitions", which are as under: -

5.4. Further the CBEC vide circular No. 96/7/2007-ST, dated 23-8-2007 at reference Code 04FOI/23-8-07 in answer to a question. "Organisers of Trade Fairs and Exhibitions solicit participation from the trade and industry and provide space and other facilities, including furniture, cabins, security, electricity, etc., to display products and provision of services. Whether services provided by the organisers of trade fairs/exhibitions are covered within the scope of event management service, Section 65 (105) (zu), clarified that "Trade fairs and exhibitions are organised by the persons. Such organisers of trade fairs and exhibitions provide services to exhibitors in relation to business exhibition. Services provided by an organiser of trade fairs and exhibitions to an exhibitor in relation to business exhibition is liable to service tax under "Business Exhibition Service". Section 65 (105) (zzo) w.e.f. 10-9-2004.

The aforesaid circulars have been quoted by the Appellate Authority in the order impugned.

17. The question for consideration before this Court is that whether activities of the petitioner covers within the definition of "Business Exhibition" u/s 65 of Chapter V of the Finance Act, 1994 and explained by the circulars of the department and sub-section (105) (zzo) of the Act of 1994.

18. Before adverting to the aforesaid question, in our opinion, it would be just

and proper to enumerate the general principle in regard to interpretation and construction of taxing statute. It is well established rule of law that taxing statute is to be strictly construed. Hon'ble Justice G.P. Singh in his Book named as "Principles of Statutory Interpretation" has written as under in regard to General Principles of strict construction of a taxing statute :-

(b) General Principles of strict construction :

A taxing statute is to be strictly construed. The well established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury and Lord Simonds, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words." In a classic passage Lord Cairns stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." Viscount Simon quoted with approval a passage from Rowlatt, J., expressing the principle in the following words : "In a taxing Act one has to look merely at what is clear said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". Relying upon this passage Lord Upjohn said : "Fiscal measures are not built upon any theory of taxation".

The above passage stating the principle of strict construction of taxing statutes was quoted (from Sixth Edition of this Book) with approval in Commissioner of income tax, Madras Vs. Kasturi & Sons, where the word moneys" in the expression "moneys payable" in Section 41 (2) of the income tax Act, 1961 was not construed to include "money"s worth".

In fiscal legislation a transaction cannot be taxed on any doctrine of "the substance of the matter" as distinguished from its legal signification, for a subject is not liable to tax on supposed "spirit of law" or "by inference or by analogy". In refuting the doctrine of "the substance of the matter" Lord Tomlin observed : "It is said that in revenue cases there is a doctrine that the Court may ignore the legal position and regard what is called "the substance of the matter". This supposed doctrine seems to rest for its support upon a misunderstanding of language used in some earlier cases. The sooner this misunderstanding is dispelled, and the supposed doctrine given its quietus, the better it will be for all concerned, for the doctrine seems to involve substituting "the uncertain and crooked cord of discretion" for "the golden and straight metwand of the law". In the same case Lord Wright pointed out that "the true nature of the legal obligation" arising out of a genuine transaction "and nothing else is the

substance". The above principle which is known as Duke of Westminster Principle is subject to the new approach of the Courts towards tax evasion schemes consisting of a series of transactions or a composite transaction.

19. The Hon''ble Supreme Court further in the case of Union of India and another Vs. Azadi Bachao Andolan and another, reported in AIR 2004 SC 1107, has held as under :-

They also urge that motives with which the residents have been incorporated in Mauritius are wholly irrelevant and cannot in any way affect the legality of the transaction. They urge that there is nothing like equity in a fiscal statute. Either the statute applies *proprio vigore* or it does not. There is no question of applying a fiscal statute by intendment, if the expressed words do not apply. In our view, this contention of the appellants has merit and deserves acceptance. We shall have occasion to examine the argument based on motive a little later. (Para 114)

20. The Hon''ble Supreme Court in the case of The Controller of Estate Duty, Gujarat Vs. Shri Kantilal Trikamlal, reported in AIR 1976 SC 1935, has held as under:-

In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. The frames of the Estate Duty Act desired by a deeming provisions regarding "disposition" to cover extinguishments of debts and all other rights at the expense of and made by the deceased in favour of the beneficiary. The substantive definition of "property" in Section 2 (15) is not exhaustive but only exclusive and the supplementary operation of Explanation 2 takes in what is not conventionally regarded as. "disposition". (Para 20)

21. The Hon''ble Supreme court also in the case of Mathuram Agrawal Vs. State of Madhya Pradesh, has held as under :-

The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the Legislature. The statute should clearly and unambiguously convey the three components of the tax law, i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the Legislature to do the needful in the matter. (Para 12)

22. From the aforesaid principle of law laid down by Hon''ble the Supreme Court

it is clear that taxing statute has to be construed strictly because as per Article 265 of the Constitution no tax shall be levied or collected except by the Authority of law.

23. Hon"ble the Supreme Court in the case of Union of India (UOI) and Others Vs. Martin Lottery Agencies Ltd., has held, as under, about the word "service" on the basis of its dictionary or etymological meaning :-

20. The word "service" has not been defined in the Act. Its dictionary or etymological meaning may or may not be appropriate. We would, however, notice its dictionary meaning :-

"Work done or duty performed for another or others; a service; as, professional services, repair service, a life devoted to public service.

An activity carried on to provide people with the use of something, as electric power, water, transportation, mail delivery, telephones, etc.

Anything useful, as maintenance, supplies, installation, repairs, etc., provided by a dealer or manufacturer for people who have brought things from him.

24. Sub-section (19A) of Section 65 of Finance Act, 1994 defines "Business Exhibition" which means to market, to promote, to advertise or to show-case. If the history of Gwalior Trade Fair be traced out, then the trade-fair is being organized for the last 105 years. Initially, it was in the form of cattle-fair, where cattle were brought for the purpose of sale and purchase. Subsequently, the nature of fair was changed and various persons, companies used to come in the fair to sell their products. The Government Offices are also exhibiting their activities. Some entrepreneurs of Small Scale Industries especially from backward areas of the country, viz., Manipur, Assam and Central-East States used to come in the fair to exhibit their products. The Government provides them some incentives so it cannot be said that the fair has been organized by the Government to promote the business activities in order to gain revenue. Contrary to this, the object of the fair is to provide a platform to various entrepreneurs along with companies to exhibit their products and also exhibit their skills. The consumers can also get benefits in this process. The petitioner is not organising it as a commercial venture. Contrary to this, the petitioner has been controlling the fair. There is no question of organisation of the fair because it has been in process of organisation for the last 105 years. From the object of the Act of 1994 and the history as has been traced out by the Hon"ble Supreme Court in the case of all India Federation of Tax Practitioners and others Vs. Union of India and others (supra), it is clear that the service tax has been imposed on the basis of the fact that the service has also been become a part of commercial activities. But, the State has other foreign functions apart from commercial activities although in some affairs the State is also involved in commercial activities and it is getting profit from those activities. However, the present case is not the case in which it has to be held that the petitioner-Authority has been providing service. In this view of the matter, in our opinion, the petitioner is not liable to

pay service tax under the provisions of the Finance Act, 1994 and subsequent amendment made therein.

25. Learned Counsel for respondents has also raised an objection about maintainability of petition on the ground that there is a provision of another appeal. However, the petition has been admitted for final hearing and looking to the question involved in this petition about interpretation of certain provisions of the Finance Act, 1994, in our opinion, it would not be just and proper to dismiss the petition on the ground of availability of alternative remedy because it is well settled principle of law that for issuance of writ of certiorari alternative remedy is not a bar. Consequently, petition of the petitioner is allowed. The impugned order dated 30-4-2010 (Annexure P-14), passed by the Assistant Commissioner, Central Excise Division, Gwalior and the order dated 21st October, 2010 (Annexure P-15) passed by the Commissioner (Appeals), Customs, Indore are hereby quashed. No order as to costs.