(1973) 11 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : General Sales tax Reference No. 1 of 1971

J.B. Brothers APPELLANT

Vs

The Assessing Authority RESPONDENT

Date of Decision : 23-11-1973

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 5(1)

Citation : (1973) 2 ILR HP 1161

Hon'ble Judges : R.S. Pathak, C.J;D.B. Lal, J

Bench : Division Bench

Advocate : A.C. Sud and K.D. Sud, for the Appellant; B. Sita Ram, General, for the Respondent

Judgement

R.S. Pathak, C.J.—This reference has been made under the Punjab General Sales Tax Act, 1948, for the opinion of this Court on the following question:

Whether nylon yarn used for knitting is chargeable at the rate of 1 per cent or at the general rate of 6 per cent?

2. The dealer was assessed to sales tax under the Punjab General Sales Tax Act for the assessment year 1964-65, and in respect of the turnover of knitting nylon the Assessing Authority levied tax at the rate of 6 per cent.

3. The dealer applied in revision against the assessment order to the Excise and Taxation Commissioner, Himachal Pradesh, and contended that the turnover for the period January 5, 1965 to March 31, 1965, was not liable to tax at the rate of 6 per cent but at the rate of 1 per cent. Reliance was placed upon the Punjab Government Notification No. SO/29-P.A.-46/48/S.5/65, dated January 5, 1965, which reads as follows:

Notification The 5th January, 1965

In partial modification of Punjab Government Revenue Department (Excise and Taxation) notifications No. 1864-E&T-58/1012, dated the 19th April, 1958 and

No. 1759, dated 26th June, 1958, and in supersession of Punjab Government Revenue Department (Excise and Taxation) Notification No. S.O.215/P.A. 46/48/ S.5/63, dated 21st May, 1963, and in exercise of the powers conferred by Sub-section (1) of Section 5 of the Punjab General Sales Tax Act, 1948, the Governor of Punjab is pleased to order that sales tax on all types of yarn (woollen, silken or cotton), other than knitting wool, shall be leviable at the rate of 1 per cent of the sale price thereof.

The Excise and Taxation Commissioner expressed the view that nylon yarn attracted tax at 1 per cent but nylon yarn for knitting purposes did not fall within the aforesaid notification and was liable to tax at 6 pet-cent.

4. The dealer now applied in revision to the Financial Commissioner, Himachal Pradesh, against the order of the Excise and Taxation Commissioner. The Financial Commissioner held that the notification dated January 5, 1965, did not cover nylon yarn at all and whether it was plain nylon yarn or nylon yarn used for knitting the rate of tax was 6 per cent. The revision petition was rejected.

5. At the instance of the dealer, the Fiancial Commissioner has now made this reference.

6. In my opinion, the Financial Commissioner is perfectly right. It is not disputed between the parties that if the notification dated January 5, 1965, does not apply the rate of tax on the turnover is 6%. The notification dated January 5, 1965, provides that "sales tax on all types of yarn (woollen, silken or cotton), other than knitting wool, shall be leviable at the rate of 1 per cent of the sale price thereof." It is contended for the dealer that when the notification speaks of all types of yarn, it includes nylon yarn, and that the words "woollen, silken or cotton" placed between brackets have been added merely as illustrative, and not as exhaustive, of the types of yarn contemplated by the notification. So construed, the dealer says, the notification should be read as referring to all types of yarn including nylon yarn, the only yarn excepted being knitting wool.

7. In my opinion, the contention is without substance. When the notification speaks of "all types of yarn (woollen, silken or cotton)", it refers to all types of woollen yarn, silk yarn or cotton yarn. Nothing turns on the use of the word "silken". It represents the archaic form of "silk" used as an adjective. It is common place that yarn can be of different types, and among the determining factors are fibre combinations and the twist employed. The Encyclopaedia Britannica tells us that yarn is manufactured in several forms, knop, curl knicker, random, marl, melange, grandarelle, spiral, tram and bleached yarn. And then whatever the yarn, it is manufactured in different counts or numbers, different varieties of yarn are employed in the manufacture of different kinds of textiles. Therefore, when the notification speaks of "all types of yarn", it refers not to the substance of which the yarn is made. It refers to all the forms in which woollen yarn, silk yarn or cotton yarn is sold. The notification deals only with woollen yarn, silk yarn and cotton yarn of different types, and has nothing to do with

nylon yarn. Nylon yarn of any type was never intended to be covered by the notification. Upon that understanding of the notification, the circumstance that knitting wool alone has been excepted from the scope of the notification is irrelevant to the question before us.

8. It is urged that the words ''woollen, silken or cotton'' have been placed within brackets to indicate that they were merely illustrative. I am unable to appreciate how that can be so, having regard to the context in which those words are used. The mere circumstance that the three words are placed within brackets makes no difference at all when the intent of the notification is plain. Too great a significance cannot be attached to the use of the brackets. Had commas been used instead of brackets, the meaning would have remained the same. Punctuation can never justify a construction which the context docs not allow. From the earliest times, the canons of statutory construction evolved by the courts in England have denied any real significance to punctuation. In Duke of Devonshire v. O''Connor (1861) 24 Q.B.D. 468, 478, Lord Esher M.R. while construing an exception contained in the statute, observed:

It has been said that there are brackets in it but that we must read it as though the brackets were removed to some other part of the clause. But if notice is to be taken of the brackets, it must be subject to the language used, and then it may be shown that either at both ends or at one end of the parenthesis the bracket must have been erroneously placed, and that the brackets must be put in the right place according to the sense and construction of the language used. To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops.

The principle that punctuation forms no part of any statute flows from the circumstance that originally when the Act was set out on the Parliament Roll there was no punctuation. For that reason, Cockburn C.J. felt that he was not bound in Stephenson v. Taylor (1861) L.B.S. 101, by the punctuation in the printed copies of the enactment. In I.R.C. v. Hinchy (1960) A.C. 748 (H.L.), Lord Reid considered it doubtful whether punctuation could be looked at even in modern Acts. And as regards India, the Privy Council in Maharani of Burdwan v. Murtunjoy Singh L.R. 14 I.A. 30 (P.C.). Review 29 and in L.P. Pugh v. Ashulosh Sen L.R. 56 I.A. 93 (P.C.) laid down that punctuation was no part of the statute. Some commentators regard this view as an example of the divergence between common understanding and the law. Mr. R.E. Megarry, the Book Review Editor of the Law Quarterly Review, laments in his note on Copulatives and Punctuation in Statutes (1959) 75 Law Quarterly: "Nobody in his senses who was trying to interpret an obscure passage of prose would disregard all punctuation, from commas and quotation marks to brackets and full stops; yet on the strict theory of English law, this must, it seems, be done in construing a statute". He would prefer, he says, the more rational Scottish rule in respect of modern Acts on the consideration pointed out by Lord Jamieson in Alexander v. Mackenzie (1947) S.C. 155, 166, that: "Bills when introduced in Parliament have punctuation and without such would be unintelligible to the legislators, who pass them into law as punctuated". There may possibly be room for reform and change in this regard, but there is need to remember that where the meaning and intent of the statute is evident on the face of it, punctuation can ill-afford a guide to construction. The true approach has been well expressed in the practice followed by the courts in the United States that punctuation is subordinate to the text and is never allowed to control its plain meaning. In Crawford on Statutory Construction, we find the following passage 1940 Ed. 342 para 199. 389:

Of course, the punctuation of a statute may land some assistance in its construction but when the intention of the statute and the punctuation thereof are in conflict the former must control, even where the punctuation is regarded as a part of the salute. In other words, the punctuation will not control the plain meaning of the text of an enactment. It is subordinate to the text, and the retention of a word is of far more importance than the position of comma. Indeed, the court may punctuate or disregard existing punctuation, or re-punctuate in order to give the legislative intention effect.

The principle received the approval of our Supreme Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, where B.K. Mukherjea J. observed that while punctuation could have its uses in some cases, it "cannot be allowed to control the plain meaning of text", and S.R. Das J. affirmed that punctuation would have to be disregarded if it was contrary to the plain meaning of the statute. "If punctuation is without sense or conflicts with the plain meaning of the words", he warned, "the Court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have.

9. In the case before us, it seems clear to me that the plain intention of the notification is to confine its scope of yarn made of wool, silk or cotton. It does not affect nylon yarn of any type.

10. In my opinion, knitting nylon is not covered by the notification No. SO/29-P.A.46/48/S.5/65, dated January 5, 1965, and therefore the turnover of knitting nylon for the period January 25, 1965 to March 31, 1965, must be assessed at 6% and not at 1%. The question referred is answered accordingly.

11. The Respondent is entitled to his costs, which I assess at Rs. 100.

D.B. Lal, J.

12. I agree.

