(2009) 08 GUJ CK 0019

In the Gujarat High Court

Case No : L.P.A. No. 1241 of 2009

Navneet Publications (India) Ltd. and Another APPELLANT

Vs

Municipal Corpn. RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1), 300A

Citation : (2009) 3 GLH 321

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Kureshi, J

Bench : Division Bench

Advocate : S.N. Soparkar and Amar N. Bhatt, for the Appellant; R.M. Chhaya, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, C.J.—Short question that has come up for our consideration in this Letters Patent Appeal is whether lined note book would fall within Clause 4(41) of the Ahmedabad Municipal Corporation (Octroi) Rules, 1949.

2. Appellant-petitioner is a public limited company carrying on the business inter alia of publications of educational books, general books, drawing books, note books (exercise books), foolscap note books (long note book) and children books and paper stationery as well as computer stationery. Octroi Department of the Ahmedabad Municipal Corporation is collecting octroi at the rate of 2 % on note books, long books as well as drawing books when the such items are entering the municipal limit and the appellant used to pay octroi duty. Later, the appellant came to know that they have been paying octroi wrongly since those items are exempted under the above mentioned provisions. Appellant-petitioner, therefore, approached this Court by way of writ petition seeking a declaration that the levy of octroi on the products of the petitioners being note books (exercise books) and drawings books as illegal, unauthorised, arbitrary and violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and also sought a direction to respondent to refund the octroi so far collected by the respondent. Learned

single Judge found no reason to accept the plea and rejected the writ petition, against which, this Letters Patent Appeal has been preferred.

3. Learned Senior Counsel Mr. S. N. Soparkar appearing for the appellant-petitioner submitted that the learned single Judge has committed an error in coming to the conclusion that blank note books, may be lined or un-lined, would not fall in the category of stationery of all sorts, comprising of papers and same would fall in the octroi category Entry No. 49. Learned Sr. Counsel submitted that above-mentioned products of the appellant would fall under the exemption of octroi Clause 4 (41) and whatever amount which has been recovered from the appellant-petitioner unlawfully, be refunded. Learned Sr. Counsel submitted that the word "including" used in the exemption clause enlarges the scope and ambit of the exemption clause and hence, the books dealt with by the appellant would fall within exemption clause. In support of his legal contention, learned Sr. Counsel placed reliance on the decisions of the Apex Court in the case of Central Bureau of Investigation Vs. v.C. Shukla and Others, Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and Lucknow Development Authority Vs. M.K. Gupta,

4. Learned Counsel Mr. R.M. Chhaya appearing for the respondent - Corporation, on the other hand, contended that the learned single Judge has rightly rejected the prayer since items dealt with by the appellant-petitioner would not fall within the exemption clause and is, therefore, liable to a levy of octroi duty.

5. We are concerned with the question as to whether ''lined note book'' would fall within exemption clause. Exemption Clause 4(41) is extracted hereunder for easy reference, ''which reads as under:

(41) All kinds 6f printed matter including books, literatures, magazines, periodicals, examination answer and question papers.

6. Specified items, in our view, included in the exemption clause, such as, books, literatures, magazines, periodicals, examination answer and question papers will have some nexus with the words "all kinds of printed matter". The word "printed" means that has been printed, especially, produced, reproduced or decorated by a process of printing. Printing can be on a fabric, on a book, or a newspaper and so on. Lined or ruled note book is not generally known or described as a printed book, especially, when we look at the items included in the exemption clause such as literature, magazines, periodicals, examination answer and question papers. Contention was raised by the appellant-petitioner that examination answers and questions papers are generally blank or ruled. Rule making authority in its wisdom specifically included those items in the exemption clause.

7. We are interpreting an exemption clause in a taxing statute and therefore, if strictly construed, exemption notification cannot be unduly starched to produce an unintended results in derogation of plain language employed therein. Relying on the decision in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, the Apex Court in Liberty Oil Mills (P) Ltd., Bombay Vs.

Collector of Central Excise, Bombay, held that in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee. Same is the view taken by the Apex Court in Re Nirabai (1927) 29 Bom 203 relying on Sutherland, Statutory Construction, Volume 3, third Edn., 296, held that "as a general rule grants of tax exemptions are given a rigid interpretation against the assertion of the tax - payer and in favour of the taxing power.

8. We are, therefore, unable to accept the contention of the learned Counsel for the appellant that lined or unlined note book would fall in the exemption clause.

9. The Letters Patent Appeal, therefore, lacks merits and stands dismissed.