

(1986) 12 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1293 of 1983

Shushil Kumar and Sons

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1)

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1)

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1)

Citation : (1987) 67 STC 64

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Vineet Saran, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.R. Misra, J.—The petitioner held a licence for khandsari manufacturing unit. He gave the required option contemplated under proviso to Sub-section (1) of Section 3 of the U. P. Sugarcane (Purchase Tax) Act, 1961 and had to pay tax as provided by Rule 13-A of the U. P. Sugarcane (Purchase Tax) Rules (hereinafter referred to as the Rules). With regard to the closure of the unit the petitioner sent a registered letter dated 23rd April, 1982, intimating his intention to close the unit on 30th April, 1982. The petitioner, however, again sent another letter dated 26th April, 1982, intimating that now he will be closing the unit on 3rd May, 1982. The Khandsari Inspector also inspected the unit on 4th May, 1982, and found the same closed. On these facts there is no dispute between the parties. The Khandsari Inspector, however, was of the opinion that the second intimation for closure of the unit on 3rd May, 1982, was not in accordance with law and, therefore, the petitioner was liable to pay purchase tax for the entire month of May, 1982. He accordingly issued a notice of demand for a sum of Rs. 10,360, a copy of which has been filed as annexure I to the writ petition. Obviously this demand related to the assessment year 1981-82. It, however,

further appears that in connection with the renewal of licence for the assessment year 1983-84, the Assistant Sugarcane Commissioner refused to renew the licence on the ground that the aforesaid amount of Rs. 10,360 for the assessment year 1981-82, is in arrears against the assessee. A copy of this show cause notice of intended refusal to renew the licence for the assessment year 1983-84 has been filed as annexure II to the writ petition. I, however, find that in the writ petition no grievance has been raised with regard to the refusal to renew the licence for the assessment year 1983-84, and therefore, so far as the present writ petition is concerned the said show cause notice, a copy of which has been filed as annexure II to the writ petition, is merely consequential to the aforesaid notice of demand for a sum of Rs. 10,350 for the assessment year 1981-82.

2. Section 3 of the said Act is the charging section. In the case of an option exercised under the later part of proviso to Sub-section (1) of Section 3 of the said Act, Rule 13-A of the Rules provides the manner for the payment of tax by the owner of the unit. The said rule lays down as under:

13-A. Payment of tax by owner exercising option,-(1) The option referred to in proviso to Sub-section (1) of Section 3 of the Act (hereinafter called "the option") shall be exercised by the owner of a unit by way of declaration in form XIII, which shall be sent under registered cover to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer so as to reach them 16 days before the start of the unit. In such declaration the owner shall specify the date from which he decides to start the working of his unit:

Provided that where the owner decides to start the working of his unit from any date earlier than the date specified under this sub-rule he shall, before he starts the working of his unit, give intimation to this effect, in writing and under registered cover at least one week before the date from which he decides to start the working of his unit to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer :

Provided further that where the owner decides to start the working of his unit from any date subsequent to the date specified under this sub-rule, he shall give an intimation to this effect, in writing and under registered cover to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer, at least one week before the date specified.

(1-A) The owner of a unit shall give an intimation in writing of the date on which he decides to close the working of the unit. It shall be given under registered cover at least one week before such date, to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer :

Provided that where the owner decides to close the working of his unit from any date earlier than the date specified under this Sub-rule (1-A) he shall, before he closes the working of his unit, give an intimation to this effect in writing and under registered cover at least one week before the date from which he decides

to close the working of his unit, to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer :

Provided further that where the owner decides to close the working of his unit from any date subsequent to the date specified under Sub-rule (1-A), he shall give an intimation to this effect, in writing and under registered cover to the Sugar Commissioner, the Assistant Sugar Commissioner and the Assessing Officer, at least one week before the date specified.

(2) Where the owner of a unit exercises the option, the quantity of sugarcane on the purchase of which he shall be liable to pay the tax shall be assumed on monthly basis according to specifications laid down to Schedule I:

Provided firstly that in the first month of the working of the unit in any assessment year the quantity of sugarcane for the purpose of payment of tax shall be assumed from the date specified in declaration made under Sub-rule (1) or changed under the first or the second proviso to that sub-rule, as the case may be :

Provided secondly that in the last month of the working of the unit in any assessment year the quantity of sugarcane for the purpose of payment of tax shall be assumed upto the date which is intimated by the owner of a unit under Sub-rule (1-A) or changed under the first or the second proviso to that sub-rule, as the case may be; and further that if the owner of a unit is found to have closed his unit after the specified or changed date under Sub-rule (1-A) the quantity of sugarcane for the purpose of payment of tax shall be assumed for the whole of such month :

Provided thirdly that where the owner of a unit is found to have started the working of the unit before the date specified or changed under Sub-rule (1) the quantity of sugarcane for the purpose of payment of tax shall be assumed for the whole of such month.

(3) The owner of a unit exercising option shall pay the tax by the twenty-fifth day of the month immediately preceding the month for which the tax is due.

3. According to the scheme of the aforesaid rule the owner, when he decides to start his unit, has to give an information to the Assessing Officer, who is the Khandsari Inspector, of the date of start of working of unit. In case the said date is proposed to be changed then an information afresh has got to be given again in writing to the authorities concerned at least one week before the date now so changed or specified. Similarly when the owner of a unit decides to close the working of the unit he has got to give necessary intimation to the authorities concerned to this effect in writing at least one week before the date of closure stating or specifying the date when he decides to close the working of the unit. The first proviso to Sub-clause (1-A) of Rule 13-A of the Rules provides for intimation in cases when the unit is proposed to close its working on any date earlier than the date already specified for closure under the substantive Clause

(1-A) of Rule 13-A of the Rules. Under the second proviso to the aforesaid Sub-clause (1-A), in case the owner decides to close the working of his unit from any date subsequent to the date already specified for closure of the unit, in that event he is required to give an intimation to this effect again in writing to the authorities concerned at least one week before the subsequent date of closure so intimated or specified. Further under second proviso to Sub-clause (2) of Rule 13-A of the Rules it is specifically stated that in the last month of the working of the unit the quantity of sugarcane for the purpose of tax shall be assumed from the date specified in declaration made under Sub-rule (1) or changed under the first or second proviso to that Sub-rule.

4. A scrutiny of the aforesaid scheme contained in Rule 13-A of the Rules shows that the object underlying the aforesaid provisions is that necessary information of dates of start or closure of unit has got to be given a week before to the authorities concerned so that the Khandsari Inspector may inspect and verify the correctness of the intimation given to him under the said Rules and assess monthly tax accordingly, under Sub-clause (2) of Rule 13-A of the Rules. These Rules also contemplate more than one intimation if necessary of start or closure of a unit. Under the second proviso to Sub-clause (2) of Rule 13-A of the Rules it is further laid down that in case the owner of a unit is found to have closed his unit after the specified or changed date under Sub-clause (1-A) the quantity of sugarcane for the purpose of payment of tax shall be assumed for the whole of such month. In other words, for default of not giving the requisite intimation at least one week beforehand or of not giving intimation to the authorities prescribed, that too in the prescribed manner, the unit holder renders himself liable to pay tax from the date of intimation of closure of unit till the last day of that month.

5. Sri A. B. Saran, learned counsel appearing on behalf of the petitioner submits that in view of the second proviso to Sub-clause (1-A) of Rule 13-A of the Rules the intimation given by the petitioner on 26th April, 1982, to close the unit on 3rd May, 1982, is in accordance with the law and the view taken by the Khandsari Inspector that he is liable to pay tax for the whole month of May, 1982 is patently erroneous in law. While elaborating his submission Sri Saran contends that under the substantive part of Clause (1-A) of Rule 13-A of the Rules more than one specified date is contemplated in the sense that whenever there is any intimation sent by owner of the unit for the closure of the unit he can always under the second proviso to Sub-clause (1-A) of the Rules extend the date of closure by sending a subsequent intimation therefore in accordance with the law and pay tax accordingly. The second limb of the submission of Sri A. B. Saran is that having regard to the scheme of Rule 13-A of the Rules the words "date specified" should be interpreted to be the last date intimated for closure of the unit. These contentions are sought to be refuted by the learned Standing Counsel who appears for the State. According to him the words "specified date" used under the substantive part of Clause (1-A) of the Rules contemplate only one specified date and any subsequent date will not become "specified date" within

the meaning of second proviso to Sub-clause (1-A) of Rule 13-A of the Rules. Thus, in the present case even for the closure of his unit on 3rd May, 1982, the intimation therefore should have been given latest by 23rd April, 1982, i.e., a week before the first specified date of closure of 30th April, 1982.

6. These rival submissions lead me to consider the various principles for the interpretation of the statutes. The first of these principles is that in order to find out meaning of a word or words in a statute the court must see that it is giving effect to the intent and purpose of the statute in question [see Poppatlal Shah Vs. The State of Madras, to interpret is not to restrict or to expand the meaning of the statute which, in truth, it intends to convey. So every effort is necessary to make a statute workable and not to render it otiose by giving it a "meaningless" interpretation. It is a settled rule of construction that in arriving at the true meaning of any particular phrase in a statute, it must not be viewed isolated from the context, it must be viewed in its whole context [see Jagir Singh and Others Vs. State of Bihar and Another etc. etc., . A statute must be so construed as to make its effective and operative on the principle expressed in the maxim : "ut res magistrate valeat quam pereat".

7. The following observations of Viscount Simon, Lord Chancellor, L. J., in the case of Nokes v. Doncaster Amalgamated Collieries [1940] 3 All ER 549 (HL) at page 564 are worthy of note :

If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

8. The principle underlying this rule has been given effect to and accepted by the Supreme Court in a large number of cases including in the case of Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, wherein their Lordships have stated the principle as under :

It is well known rule of construction that a court must construe a section, unless it is impossible to do so, to make it workable rather than to make it unworkable.

9. Since in the present case I am considering a phrase which occurs in the proviso to the rule, the principles relating to construction of proviso may also be taken into account. The rule is that the construction of a proviso must be construed in such a way as to avoid any repugnancy or absurdity. See Gajo Ram v. State of Bihar AIR 1926 Pat 113. A proviso should be so construed as to be in a harmony with the main section to which it is a proviso.

10. Countering an argument against literal construction of the proviso Du Pareq, L.J., remarked to the same effect in the case of No-Nail Cases Proprietary Ltd. v. No-Nail Bones Ltd. [1944] 1 All ER 528 at page 529 [this decision was affirmed in Craddock v. Zevo Finance Co. [1946] 1 All ER 523 (HL)] as under :

The object of the rule is to ensure that effect shall be given to the true intention of Parliament and not to prevent the courts from giving effect to that intention. Still less is the rule designed for the purpose of defeating the intention of the legislature.

11. Yet another angle for interpretation of the statute is to take into consideration the consequences of the interpretation. Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effect or consequences which would result from it. There are certain objects which the legislature is presumed not to intend and a construction which would lead to anyone of them is, therefore, to be avoided. Maxwell on the Interpretation of Statutes, 12th edition at page 199 also takes the same view. To the same effect is also the observation of Danckwerts, L. J., in the case of *Artemiou v. Procopiou* [1966] 1 QB 878 wherein it has been stated as under:

An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available.

12. The Supreme Court has also in the case of *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, taken the view that the construction giving rise to anomalous results should be avoided. In this connection the following observations of Justice Venkatarama Ayyar in the case of *Tirath Singh Vs. Bachittar Singh and Others*, are also apt on the point:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice presumably not intended a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.

13. Applying the above principles of construction of statutes and after a consideration of the scheme and of the Act and the Rules made thereunder it is clear that the argument advanced on behalf of the petitioner has got force. In case the interpretation put by the petitioner is not accepted it will lead to a hazardous result inasmuch as after the first intimation of closure given by owner of the unit under the substantive Clause (1-A) of the said Rules unforeseen circumstances or events might happen which could not be forestalled by owner of the unit one week before the date of first closure intimated by the petitioner. On the other hand if the interpretation sought to be put by the Standing Counsel is accepted it will lead to inconvenient, unjust and absurd results and such a construction of the words used in a statute are to be avoided. In my opinion the substantive part of Clause (1-A) of Rule 13-A of the Rules does contemplate the various specified dates and is not confined to one specified date and further that the words "specified date" contemplated under the second proviso to Sub-clause (1-A) of Rule 13-A of the Rules mean not only the first date specified for closure of the unit but all subsequently altered date or dates so intimated by owner of

the unit for closure of the unit from time to time. Further in the second proviso to Sub-clause (2) of Rule 13-A, the words "date changed" used and underlined by me above is also a clear pointer to the said intention of the legislature and is in consonance with the scheme of Rule 13-A. The interpretation put by me above is more just and reasonable and does not lead to absurd results.

14. There is yet another angle which may not be lost sight of. There is no prejudice also caused to the department by the aforesaid interpretation put by me.

15. Having regard to the above I am of the opinion that the intimation given by the petitioner in the present case on 26th April, 1982, to close the unit on 3rd May, 1982, was a valid one and was in accordance with the prescribed rules and the Khandsari Inspector is not justified under the law to raise any additional demand as done by him in annexure I to the writ petition. The said demand is illegal and is liable to be struck down.

16. In the result, the writ petition succeeds and is allowed with costs. The notice of demand for a sum of Rs. 10,350, a copy of which has been filed as annexure I to the writ petition, is quashed. Since annexure II is merely consequential to annexure I, no relief with regard to the same need be granted. In case the petitioner has deposited any money in pursuance of the aforesaid notice of demand, the same shall be refunded.