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(1991) 07 GUJ CK 0032

In the Gujarat High Court

Case No : Sales Tax Reference No. 8 of 1984

Soham Prakashan (Pvt.) Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 2(10), 2(12), 2(4), 62(1), 69(1)

Citation : (1991) 07 GUJ CK 0032

Hon'ble Judges : Sharad D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Advocate : R.D. Pathak, for S.L. Modi, for the Appellant; Rekha M. Doshit, for H.V. Chhatrapati and Co., for the Respondent

Judgement

A.P. Ravani, J.—The reference is at the instance of the dealer which is a private limited company dealing in publication and sale of newspaper called "Lokraj" (daily).

2. The dealer submitted application u/s 62(1) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act") to the Deputy Commissioner of Sales Tax, Ahmedabad, for determination of the question as to whether it was a dealer within the meaning of section 2(10) of the Act. The Deputy Commissioner of Sales Tax decided the question as per the order dated December 15, 1977 and held that the applicant was a "dealer". Being aggrieved by the decision, the applicant-dealer preferred appeal before the Gujarat Sales Tax Tribunal. Several contentions were raised before the Tribunal. The Tribunal has negatived all the contentions and has confirmed the decision arrived at by the Deputy Commissioner of Sales Tax, as per judgment and order dated April 21, 1980.

3. The applicant-dealer submitted an application for making reference to this Court u/s 69(1) of the Act. The Tribunal, after drawing the statement of case referred a question to this Court for its opinion. The question referred and the answer is as follows :

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Question Answer Whether, on the facts and in the circumstances In affirmative, of the case, the Tribunal was right in holding in favour of that the applicant was a dealer under the the Revenue and Gujarat Sales Tax Act, 1969, in respect of its against the activity of buying newsprint, printing-ink and assessee. other materials necessary for printing and publishing a newspaper ?

4. The short question to be decided is as to whether the term "business" occurring in the definition of "dealer" contained in section 2(10) of the Act should be given the restricted meaning so as to confine it to business in "goods" as defined u/s 2(12) of the Act ? Or "business" has to be understood as covering other articles also, over and above the "goods". It is an undisputed position that the definition of "goods" occurring in section 2(12) of the Act excludes newspapers. This is so in view of the constitutional provisions occurring in entry 54 of List II of the Seventh Schedule to the Constitution. Thus it is evident that newspaper is not an item which falls within the legislative competence of the State. However, the term "business" has also been defined in section 2(4) of the Act. It is an inclusive definition. It is difficult to find that the term "business" excludes trade, commerce or manufacture or any adventure in relation to any commodity which is not "goods". The term "business" as defined in the Act takes within its sweep all the activity which may be called business even in relation to an article which may not be "goods" as defined under the Act.

5. The contention that the term "business" should be interpreted so as to exclude the activity in relation to newspapers cannot be accepted. Had it been the intention of the Legislature, the Legislature would have expressed itself unambiguously. Be it noted that till August 5, 1985, in the definition of the term "business" the words "but does not include any activity in the nature of mere service or profession" were very much there. Had the Legislature intended to exclude the activity of business in relation to articles which are not "goods" as defined in the Act, the Legislature would have certainly expressed itself by indicating that the business activity in any other article which is not "goods" shall not be business. To construe the definition of "business" by saying that the business activity is confined only to "goods" as per the definition occurring in section 2(12) would amount to rewriting the section. In the guise of interpretation of statute the court cannot arrogate to itself the function of legislating. Legislation is the function allocated to the Legislature of the respective States and to the Parliament. The court''s function is to interpret the laws. If there be any ambiguity in the provisions of a statute, the court may remove the same and in the process of removal of such ambiguity a word or two may be supplied. But this can be done only for the purpose of removing the ambiguity. It would not be open to the court to add or delete a word in order to expand or restrict the scope of a particular provision. Therefore the contention that the definition of the term "business" occurring in section 2(4) should be read so as to exclude the business activity in newspapers cannot be accepted.

6. Learned counsel for the dealer submitted that the term "dealer" should be

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interpreted by reading the same together with the definition of "business". Even if one reads the definitions of "dealer" and "business" together, there is nothing to indicate that the "business" activity in the articles other than "goods" defined in the Act has not to be taken into consideration. Business is an organised activity which may not include both selling and purchasing. It may include storing also. In the context of the provisions of the Act, even if the term "dealer" is read together with the term "business" as defined in the Act, the term "business" cannot be given restricted meaning so as to exclude the business in articles other than goods as contended by the learned counsel for the dealer. This is so because if the court adopts this course, the court would be legislating and not interpreting the provisions of a statute. Moreover, there is no compelling reason, either from the context of the entire scheme of the Act or from the context of the particular provisions, to give such restricted meaning to the term "business".

7. Learned counsel for the dealer submitted that "newspaper" is an activity which has relation with the fundamental rights of the people as regards freedom of expression. Therefore, the same has been excluded from the State List in Seventh Schedule. In view of this position it is submitted that the provisions of the Sales Tax Act should be interpreted in this larger context. But even if this broad conspectus is kept in mind, one fails to understand why the term "business" should be given restricted meaning. All that the Legislature wanted was that "newspaper" should not be considered "goods" for the purposes of the Gujarat Sales Tax Act, 1969. The Legislature never intended that the business activity which may be in relation to the articles which are not goods be excluded from the purview of the definition of "business". If such persons are also brought within the definition of "dealer", all that would happen is that their activity would be regulated in relation to the turnover of their purchase. It would not be that the ultimate product, i.e., newspaper would be subject to sales tax. By giving the literal meaning to the language of the statute, as it occurs, without restricting the meaning of the term, as argued by the learned counsel for the dealer, the object underlying the provisions is achieved. The object is to see that newspaper is not subjected to sales tax levied by the State. Even if the interpretation as canvassed by the Revenue is accepted, the newspaper would not be subjected to tax. Therefore there is no reason to give restricted meaning to the definition of term "business".

8. From the judgment of the Tribunal and the record of the reference it is evident that the dealer though engaged in the activity of publication of newspaper called "Lokraj" does purchase taxable goods. In this view of the matter if the business activity in respect of the articles other than "goods" as defined in the Act is not included, while considering other provisions of the Act, it would open royal roads for escaping tax. Therefore it is evident that the interpretation suggested by the learned counsel for the petitioner would lead to absurdity. Such absurd interpretation can never be accepted.

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9. No infirmity in the reasoning adopted and the conclusion arrived at by the Tribunal is pointed out to us.

10. The question is answered in the affirmative as indicated in para 3 hereinabove. The reference stands answered accordingly, with no order as to costs.

11. Reference answered in the affirmative.

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